

Ocean Of Motions Can't Halt Westfall Bank Robbery Case

By Ken Baumel

MILFORD — The case against 31-year-old accused bank robber James Edward Heller is going to trial.

Pike County Court of Common Pleas (PCCCP) Judge Joseph Kameen took action last week at a Preliminary Hearing held at the courthouse on Broad Street in Milford Borough. Heller represented himself (a legal process termed *pro se*).

Kameen bound over for jury trial all charges lodged by Eastern Pike Regional Police (EPRP) against Heller. His last known address was a state shelter. He is accused of robbing the former Wachovia Bank office at 1001 Pennsylvania Ave. in Westfall Township on Jan. 26. Wachovia has since been taken over by Wells Fargo.

Kameen denied Heller's habeas corpus petition, which sought to dismiss charges, and accepted the *prima facie* presentation of case prosecutor, Pike County Chief Assistant District Attorney Bruce DeSarro.

A habeas corpus petition is typically filed by a person who objects to his own or another's detention or imprisonment. The petition seeks to show that the court ordering a detention or imprisonment made a legal or factual error.

Prima facie denotes evidence that unless rebutted would be sufficient to prove a particular proposition or fact, which in Heller's case is that there is a sufficient evidence and reasonable cause regarding the bank robbery.

Heller seemed to relish his role in the courtroom spotlight. Not only did he present his case *pro se*, he also sent a press release to the Pike County Dispatch in which he presented his goals. These included seeking due process, expecting the Pike courts to present a level playing field, and alleging that prosecution and law enforcement might be exceeding their legal limits.

Since Heller complained that he did not get a fair preliminary hearing at district court in March, Kameen ordered last week's hearing to give Heller and DeSarro a

chance to present their cases again. Kameen said that Heller had subpoenaed District Justice Debbie Fischer to be a witness.

Kameen noted that the state-court administration ruled that such a subpoena was inappropriate. So to save time and expense of holding another hearing at the DJ court, Kameen opted to hold the preliminary hearing at PCCCP. At that hearing, Heller came prepared with large volumes of files to defend his position. Despite the broad swath of his brush and ambitious goals, he fell short of his goals, but not for lack of effort.

DeSarro's position and goal were straightforward. He sought to show that there was sufficient evidence that Heller was the person alleged to have robbed the bank and that therefore the case warranted going to trial.

Prior to going to PCCCP, at a hearing at Pike County District Magistrate Debbie Fisher's court and at the PCCCP hearing last week, Heller denied that he robbed the bank. He disputed the charges. He noted that his actions did not meet the statutory definition of robbery.

Such definition includes threatening behavior and unlawfully depriving a financial institution of its resources. Heller attempted to convince the court that the charges should be scaled down to misdemeanors.

Eastern Pike Regional Police (EPRP) and the Pike County District Attorney's Office filed a Criminal Complaint via Affidavit of Probable Cause in the spring.

The complaint alleged that Heller violated Pennsylvania's Robbery by Strong Arm Force statute.

After fleeing the bank, Heller was apprehended after a car chase a few days after the robbery in Luzerne County. He was detained in Luzerne County Correctional Institution in Wilkes-Barre, regarding the apprehension and previous outstanding violations in Luzerne, according to EPRP Assistant Chief Eric Stewart.

In March, Stewart and another

EPRP officer arranged with Luzerne officials to bring Heller to Pike County to face bank robbery charges.

EPRP charged Heller with Theft by Unlawful Taking or Disposition (taking \$8,138 in cash with intent to deprive Wachovia Bank) Robbery by using a threat that causes fear of bodily injury, and Robbery by removing money by an oral threat or in writing that deprives a financial institution of resources without their permission.

EPRP Commission Solicitor Tom Mincer and DeSarro commented in interviews that in Pike County, major felony cases with a *pro se* advocate are rare. Mincer said that typically persons going *pro se* have not been familiar with all the technical procedures and therefore leave gaps in their presentations that leave them short of victory.

Mincer said that prisoners automatically have access to public defenders. In Pike, the Public Defender's office is among the most experienced in Pennsylvania. The staff has logged over 100 years experience cumulatively.

Mincer indicated that jailhouse lawyers can be very costly to the taxpayer because court proceedings can be protracted as in Heller's *pro se* action, where the sheer volume of information requested by Heller and the fact that his actions forced attorneys and solicitors representing judicial organizations in Pike to attend court actions.

Mincer said in an interview that his personal opinion is that additional preliminary hearings and other subsequent proceedings in this case could cost the county at least \$25,000 extra just in personnel costs and additional losses in staff productivity.

Pike and Luzerne officials had to take time off. Some were paid overtime when called outside their normal work shifts. The court also had to assign and pay for stand-by counsel from the public defender's office, Steve Guccini, who must attend any court-related actions requiring Heller to be present.

Heller is no novice regarding pro

se. He went pro se at a Preliminary Hearing held at in March at PC District Justice Debbie Fischer's court in Milford Borough.

At the DJ court, Heller, like 19th century bare-knuckle boxing champion John L Sullivan, was bold and confrontational. He asked Fischer to recuse herself.

Heller contended that Fischer and Stewart colluded to deny him due process by making personal comments about Heller at a March 7 preliminary meeting in Fischer's court at which Heller was not present. Heller also withstood attempts by Fischer to get him to agree to accept legal representation.

At PCCCP Heller changed his tactics. He became more like boxer Gentleman Jim Corbett than Sullivan. Heller was willing to finesse like Corbett and play the game.

Heller apparently did his homework. He was courteous and professional. His presentations were filled with "your honor" and courteous requests to DeSarro. Mincer said that had Heller been confrontational, the sheriff's deputies would likely have removed him immediately.

Stewart expressed his personal opinion that he did not think Heller's tactics were so refined. He termed Heller's actions as "throwing grenades and hoping at least one would hit."

At the PCCCP hearing, Heller attempted to derail the prosecution case by saying that there was insufficient evidence to warrant a PCCCP trial. Heller denied that his actions of passing a note to a teller asking for money met the statutory definition of a robbery felony because he allegedly did not use threatening language, raise his voice in a menacing manner, or use overt force.

The prosecution noted that Heller allegedly said, "This is a robbery." After cross examining a bank teller, DeSarro said that Heller's actions allegedly posed a threat to any reasonable person and therefore met the statutory definitions for robbery.

Heller said that he did not brandish any weapon. He called two tellers to the stand and quizzed them on their memory and on how they identified him through photos. He sought to call a third bank employee, but was unable to get the person's address.

Heller complained that he was not given all the information he

was entitled to receive from the DA's office, such as the six photos of possible suspects, including Heller, that were shown to three bank tellers, who were identified by police as robbery witnesses.

DeSarro subsequently presented Heller with original photos on a Compact Disk, as well as five other videos, that documented a police chase in Luzerne County that led to his arrest a few days after the robbery, and other electronic evidence allegedly gathered by police.

Heller then presented his request for dozens of subpoenas to witnesses that he wanted to examine and a large volume of information, such as police personnel records, that he said were warranted under Pennsylvania case law.

Mincer termed Heller's comprehensive list of subpoenas and requests for so many documents as "ridiculous and oppressive." After the hearing, Mincer said that Heller's "subpoena list was frivolous."

Mincer and DeSarro termed the requests were not all legally mandated and many have "no basis in law." They submitted a motion to quash the volume of subpoenas.

Heller countered that DeSarro had invited Heller previously to submit subpoenas. He said, "So this (requests) should not be held against me."

Heller called as witnesses two corrections officials from Luzerne Correctional Facilities. Heller attempted to show that he might have been denied due process when Luzerne and EPRP officers agreed to have EPRP inspect Heller's duffel bag. Heller implied that EPRP allegedly inappropriately impounded some personal Heller property from the bag.

At the hearing, Pike Prison Board Solicitor Tom Farley asked the court to quash Heller subpoenas to Pike Correctional Facility witnesses. Heller agreed to this. He said, "I want to move things (the hearing) along."

Heller, meanwhile, said that he was entitled to see personnel files and psychological profiles of EPRP officers' who were involved in his arrest and investigation. He said that he wanted to see if the officers' records contained disciplinary matters that could be relevant in this case.

Mincer and DeSarro objected what they termed Heller's "fishing expedition" as irrelevant to the

case. They noted that Heller had the burden to show that specific items in those records would be specifically relevant to this case.

Mincer also objected to Heller asking for police officers' personal information, such as home phone, address, and Social Security number. Mincer also objected to Heller asking for records of all cases filed by the EPRP officers. Mincer said that Heller asked for victim phone numbers in other cases on which the officers were previously involved unrelated to Heller's arrest. He termed Heller's voluminous requests as "busting our chops."

Heller countered that he wanted to explore exculpatory evidence (items potentially damaging to police and favorable to Heller). The only way he could find evidence that that police behavior related to the case was to review all the files since the day each officer entered law enforcement.

Mincer responded that if Heller had a specific complaint about an officer, Mincer, as EPRP Commission solicitor, could check the records and report back to the court.

Kameen sustained Mincer and DeSarro's points.

Kameen agreed to determine which witnesses should be subpoenaed and that some might not be subpoenaed. He agreed that police records did not have to be released unless specifically tied to the case. He also agreed with DeSarro that during the trial, the court should subpoena witnesses, not Heller. However, Kameen agreed with Heller that a private detective he wanted to subpoena would likely be allowed to be subpoenaed.

Heller complained that he could not subpoena some witnesses, such as his former cellmates at Luzerne, because he did not have access to their addresses.

Heller said that it was not fair play that he could not get access to their addresses and that he could not therefore mount his full defense.

DeSarro objected that at least one witness was currently serving a sentence regarding a federal homicide case and that such a person was not appropriate for the Heller trial in Pike County.

Heller submitted over 40 motions regarding discovery proceedings. Kameen agreed that outstanding motions should be processed, but that it would take time. Due to

the logistics of handling the motions and contacting all qualified witnesses by subpoena, the trial would have to be continued into the January court term. However, Kameen directed that jury selection could start next week.

DeSarro said that he was satisfied that the case was moving forward. Asked if he was satisfied that the case is going to trial, Pike District Attorney Ray Tonkin commented that if he were not satisfied, he would appeal to a higher court.

Tonkin said that he preferred to express his opinion in the midst of a case in a legal forum, not through comments to media.

Mincer commented during recess that “Heller is a smart young man. He has an absolute right to represent himself, but my personal opinion is that he is harassing the court system and the police officers.”

Mincer also said that it unfortunate that Heller went down a path that led him to be incarcerated for many years to date. It was noted during the hearing that Heller had a record with multiple felonies.

Mincer said that Heller was more familiar with the law than most people probably because he has had extensive exposure in legal venues. Mincer noted that had Heller gone into the legal profession instead, he might have developed a successful career in law.

However, Mincer said that the rules governing courtroom behavior are different for lawyers (who are officers of the court and who are bound by ethical rules). For example, they could be censured for filing frivolous subpoenas, whereas a person going pro se can't be disciplined for such action.

Heller is currently an inmate at Pike County Correctional Facilities and could be subject to extensive jail time if he is convicted in Pike and additional jail time for a parole violation in Luzerne and the violations related to the car chase in Luzerne.