

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2020-2015
 :
 DWAYNE HALL, : Opinion and Order re Defendant's
 Defendant : Motion for Extraordinary Relief

OPINION AND ORDER

This matter came before the court on July 11, 2017 for a hearing and argument on a written motion for extraordinary relief filed by Defendant Dwayne Hall (“Hall”).

On October 6, 2015, Irahmeen Mills was shot and killed near the Shamrock Bar in Williamsport. As a result of that incident, Hall was charged with an open count of homicide, aggravated assault (causing serious bodily injury), aggravated assault (bodily injury with a deadly weapon), person not to possess firearms, possession of a firearm without a license and possession of an instrument of crime (a concealed weapon). The person not to possess a firearm charge was severed for trial.

A jury trial was held May 15-19, 2017 on all of the charges except the charge of person not to possess a firearm. The jury found Hall guilty of possession of a firearm without a license and possession of an instrument of crime (PIC). The jury could not reach a unanimous verdict with respect to the homicide and aggravated assault charges. With respect to those charges, the court declared a mistrial.

On May 26, 2017, Hall filed his written motion for extraordinary relief. In his

motion, Hall seeks entry of a judgment of acquittal on his convictions for possession of a firearm without a license and PIC. Due to the jury's failure to reach a verdict on the homicide and assault charges, Hall contends that the Commonwealth failed to prove that he possessed the firearm with the intent to employ it criminally; that is, to commit or attempt to commit a crime with it. The court cannot agree.

Initially, the court notes that it is improper to assert a motion for extraordinary relief through the filing of a written motion. *Commonwealth v. Grohowski*, 980 A.2d 113, 116 (Pa. Super. 2009)(“written motions for extraordinary relief have been deemed improper”); *Commonwealth v. Howe*, 842 A.1d 436, 441 (Pa. Super. 2004)(“The plain terms of Rule 704(B) do not permit the filing of a *written* motion for extraordinary relief prior to sentencing). Instead, a motion for extraordinary relief must be made orally, and it has no effect on the preservation or waiver of issues for post-sentence consideration or appeal. Pa. R. Crim. P. 704(B); *Commonwealth v. Haines*, 2017 Pa. Super. LEXIS 489, *18 n.14 (Pa. Super. 6/30/2107).

Additionally, the intent to employ the firearm criminally is not an element of possession of a firearm without a license. *Commonwealth v. Baldwin*, 985 A.2d 830, 833 (Pa. 2009)(“Appellant's conviction under Section 6106, for carrying a firearm without a license, required the Commonwealth to establish that Appellant was either carrying a firearm in a vehicle or concealed on his person, and that he had no license to do so.”). Therefore, Hall is not entitled to judgment of acquittal on his conviction for possession of a firearm without a license.

As charged in this case, PIC is defined as follows: “A person commits a misdemeanor of the first degree if he possesses a firearm or other weapon concealed upon his person with intent to employ it criminally.” 18 Pa. C. S. §907(b).

Although intent to employ the firearm criminally is an element of PIC, the Commonwealth presented sufficient evidence to establish this element.

During the Commonwealth’s case, Dr. Land testified that the victim died as a result of a gunshot wound to the chest and abdomen. Trent Aikey and Seth Allison testified at trial that Hall, who was wearing a striped shirt and a black hat with an orange brim on the date of the incident, was the shooter. They also testified about how they were shown a photographic array shortly after the incident occurred and they selected Hall’s picture and indicated that he was the shooter. Hall stipulated that he did not have a license to carry a firearm and he was ineligible to obtain such a license. Kevin Saltsman testified that Hall told him that he was carrying a firearm in his waistband on the night in question.

Furthermore, section 6104 of the Crimes Code states:

In the trial of a person for committing or attempt to commit a crime enumerated in section 6105 (relating to person not to possess, use , manufacture, control, sell or transfer firearms), the fact that that person was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of that person’s intention to commit the offense.

18 Pa. C. S. A. §6104.

Hall was on trial for homicide and aggravated assault. Homicide is classified as murder, voluntary manslaughter, or involuntary manslaughter. These crimes, as well as aggravated assault, are enumerated offenses in section 6105. 18 Pa. C. S. A. §6105(b).

The Commonwealth presented testimony from Trent Aikey and Seth Allison that Hall was armed with a firearm and shot at the victim. The Commonwealth also presented evidence in the form of a stipulation that Hall did not have a license to carry the firearm. Pursuant to section 6104, this evidence shall be evidence of Hall's intent to commit murder, involuntary manslaughter, voluntary manslaughter, and aggravated assault.

Based on the foregoing discussion, contrary to Hall's contentions, the Commonwealth presented ample evidence from which the jury could conclude that Hall intended to employ the firearm criminally.

The fact that the jury could not reach a unanimous verdict on the homicide and aggravated assault charges is of no moment. The jury's failure to reach a verdict on those counts is not necessarily inconsistent with its guilty verdict on the PIC charge. A PIC conviction only requires that Hall *intended* to employ the firearm criminally; it does not require the actual criminal employment of the firearm. *Commonwealth v. Moore*, 103 A.3d 1240, 1243 n.5 (Pa. 2014). Furthermore, jury verdicts are not required to be consistent, and the jury's failure to render a verdict on the homicide and aggravated assault charges cannot be interpreted as specific factual findings with regard to the Commonwealth's evidence. *See id.* (the jury's acquittal of the appellant on murder and attempted murder charges did not require his PIC conviction to be vacated).

Accordingly, the following Order is entered.

ORDER

AND NOW, this 4th day of August 2017, the court DENIES Defendant Dwayne Hall's motion for extraordinary relief.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire/Nicole Ippolito, Esquire (DA)
William Miele, Esquire/Joshua Bower, Esquire (PD)
Gary Weber, Esquire (Lycoming Reporter)
Work File