

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA:

	:	
v.	:	No. 05-10,157
	:	
TAURANCE JOHNSON,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The defendant has appealed this court's verdict and sentence. On February 15, 2006, at the conclusion of a non-jury trial, this court found the defendant guilty of Possession of a Firearm, Carrying a Firearm Without a License, Possession of a Small Amount of Marijuana, Driving with a Suspended License, and Driving an Unregistered Vehicle.

The defendant alleges the court erred in admitting evidence of defendant's prior misconduct, specifically evidence of the defendant's pending Burglary and Robbery charge. The evidence was in the form of testimony by Keri Goodbrod, the alleged victim in the burglary, who testified the defendant used the same revolver in the burglary that the defendant was charged with possessing in the case before the court.

Under Rule 404(b) of the Rules of Evidence, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. It is admissible, however, for other purposes, so long as the probative value outweighs its potential for prejudice.

The court permitted the introduction of this evidence strictly for the purpose of identifying the revolver the defendant allegedly possessed. The evidence was not to be considered for the purpose of disparaging the defendant's character, and the court did not consider it for this purpose. The court found the probative value to outweigh its potential for prejudice, as the issue of whether the defendant possessed this particular weapon was crucial to the case before the court. Moreover, even if the court erred in

admitting this evidence, that error was clearly harmless, due to the acquittal on the charges related to the revolver.

The defendant next alleges the court erred in imposing its sentence, for a number of reasons. With regard to the allegation the court inadequately stated its reasons, the court disagrees. When imposing sentence, which was in the standard range, the court stated its reasons as follows: (1) Although the defendant was a very talented basketball player, the defendant had “blown it” by committing these crimes, (2) the public needs to be protected from the defendant, as the defendant was riding around with a loaded weapon, given his criminal background, and (3) the court needs to hold the defendant accountable for his actions. Moreover, in this court’s order of June 15, 2006, denying the defendant’s post-sentence motion, the court stated,

Despite his young age of twenty-five, the defendant has a very lengthy criminal history. Moreover, despite having spent time in jail, the defendant continued to commit crimes after he was released. And finally, the court takes very seriously crimes in which guns are involved, because of the obvious danger to the community. For these reasons, the court denied the defendant’s request for a sentence in the mitigated range, and imposed a sentence in the middle of the standard range for both offenses, after fully considering the pre-sentence investigation.

With regard to the allegation the court incorrectly calculated the defendant’s prior record score, the court sentenced the defendant as a REFEL, based upon the defendant’s two convictions for burglary in the state of Florida when he was a juvenile, specifically, Case No. ACJ-96-2990 and Case No. ACJ-95-4992. The defendant objected to these convictions being considered, as it was unclear from the Florida disposition orders whether the defendant was fourteen at the time the offenses were committed. The defendant turned fourteen on June 2, 1995.

With regard to Case No. ACJ-95-4992, the disposition order was entered on September 22, 1995, after a guilty plea. The court accepted the District Attorney’s statements that its office had confirmed with officials in the Circuit Court of the

Fifteenth Judicial Circuit in Palm Beach, Florida that the offense was committed on July 21, 1995, and it is noted that the arrest date was listed in the Florida documents as August 16, 1995. The court also notes the District Attorney's Office introduced its handwritten worksheet on which the date of August 16, 1995 was circled, signifying the arrest date after confirmation with the Circuit Court officials.

With regard to Case No. ACJ-96-2990, the disposition order was entered on June 12, 1996, after a trial. Again, the court accepted the District Attorney's statement that its office had confirmed with the Circuit Court that the offense had occurred on April 29, 1996. The defendant also argued that the disposition order from this case did not state whether the burglary committed was of a dwelling. Once again, the court relied on the District Attorney's statement that it was a house.

While the court would have preferred the evidence in the Florida documents to be more precise, the defendant presented no evidence that he was not fourteen at the time he committed these offenses, nor that the place burglarized in Case No. ACJ-96-2990 was not a dwelling. As he was in as good a position to provide this information as the District Attorney's office, the court was very comfortable in deciding to consider the two burglary offenses when calculating the defendant's prior record score.

Given this decision, each burglary would be a Felony I under Pennsylvania law, giving the defendant at least three points each in his prior record score, for a total of six points. Under §303.4 of the Sentencing Guidelines, the defendant would be classified as a REFEL, because he has Felony I and Felony II offenses totaling at least six points.

The defendant next alleges the court erred in finding the defendant guilty of 18 Pa.C.S.A. §6106, Firearms not to be carried without a license, as the Commonwealth only introduced evidence the defendant was not licensed in Lycoming County. The court rejected this argument, because the defendant was clearly not eligible to obtain a license under §6105 due to his previous felony convictions. Moreover, under Commonwealth v. Woods, 638 A.2d 1013 (Pa. Super. 1994), testimony of a deputy

sheriff in the county where the defendant resided concerning the defendant's nonlicensure in that county is sufficient proof to sustain a conviction under §6106, since the statute requires the defendant to apply for a license in the county where he resides. §6109(b). Upon being stopped by Officer Mains, the defendant stated that his residence was 833 Nichols Place, which is in Lycoming County. Furthermore under §6109(i), even if the defendant had somehow obtained a valid license at some point, it would have been revoked at least as far back as 1999, when he was convicted of robbery.

And finally, the defendant contends the verdict was against the weight of the evidence in that the court could not have reasonably found the testimony of Officer Mains to be credible. While it is true Officer Mains' testimony was questionable in some matters, those matters were insignificant and collateral to the primary issues before the court. For instance, Officer Mains testified that he ran a check on the license plate of the car the defendant was driving because he noticed the registration sticker had expired. However, in his affidavit of probable cause, he stated the car had no registration sticker. When confronted with this contradiction, Officer Mains admitted he did not know which was correct. A similar contradiction occurred with the precise times of the incidents in question. Such minor inconsistencies did not lead this court to find Officer Mains uncredible, especially given the length of time that had transpired since the incident and the fact that these were details. The court does not believe Officer Mains deliberately fabricated his testimony on these issues, but rather that he was mistaken.

On the important matters, however, the court found Officer Mains' testimony highly convincing and very credible. Officer Mains clearly testified he found a coat containing the .22 pistol on the driver's seat of the car the defendant was driving, as if it had just been removed and left behind. In fact, the defendant would have been sitting on the coat while driving. These facts were confirmed by the testimony of Officer Joseph Ananea, Jr., whom the court also found to be credible. In addition, the incident

occurred on the night of December 20, 2004, when the temperature was about zero degrees. And finally, the defendant admitted to owning the jacket as well as the pistol.

The finder of fact is free to find witnesses credible in regard to some issues and not credible with regard to others, and the court found Officer Mains credible in regard to the elements of the offenses he was convicted of.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
District Attorney
Paul Petcavage, Esq.
Gary Weber, Esq.