

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

: NO. SA – 40 - 2007

vs.

NICHOLAS SAMPSON,
Defendant

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OPINION IN SUPPORT OF ORDER OF JULY 16, 2007,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court’s Order of July 16, 2007, which found him guilty of 15 of the 17 counts of receiving, possessing or holding a specimen for another without a taxidermy permit which had been brought before the magistrate, and affirmed the magistrate’s sentence on those 15 counts. In his Concise Statement of Matters Complained of on Appeal, Defendant raises ten points of error. These will be addressed seriatim.

First, Defendant contends the Court erred in admitting “hearsay testimony in the nature of labels placed upon items by an unknown declarant.”¹ The Court did not, however, admit the labels for the truth of the name on the label, that is, to establish to whom the item belonged, but, rather, only to establish that there was a label on the item, as observed by the Conservation Officer who testified at trial, and that the label contained a name.² Thus, no hearsay was admitted and Defendant’s contention in this regard is without merit.

Next, Defendant contends the Court erred in “permitting Officer Krebs to prosecute Defendant, where he did not have the jurisdiction or authority to do so.” This issue was raised and addressed at trial, and the Court will therefore simply rely on the Opinion issued in support of the conviction on July 16, 2007, for purposes of the instant appeal.

Next, Defendant contends the Court erred in convicting him of possessing items without a taxidermy permit because he did have a permit at the time he received the items and the statute “does not prohibit an individual from continuing to hold items after the license has expired.” This issue was also raised and addressed at trial and the Court will therefore also rely

1 Defendant is referring to labels attached to various dead animals which were found in his taxidermy shop during the execution of a search warrant. Each label contained a name.

2 The Court believes such is circumstantial evidence that the animal did not belong to Defendant, but, rather, to “another”.

on its previous opinion for purposes of this appeal.

Next, Defendant contends the Court erred by convicting Defendant of an offense based on a regulation, the enabling legislation for which does not authorize the Game Commission to “enact criminal offenses.” The Court believes that by this issue, Defendant merely restates his second issue and thus will address it no further.

Next, Defendant contends the evidence was insufficient to sustain his conviction. The Court does not agree. The Commonwealth presented the testimony of the Conservation Officer that he found certain items (dead animals or parts thereof) in Defendant’s taxidermy shop, and with respect to each of those items an individual testified that he had brought the item to Defendant for the purpose of taxidermy work, and that he had not received it back.³ It was evident from the appearance of the items that the work had yet to be done and, thus, the Court was able to conclude that Defendant was holding the items for another. Since the evidence also showed he had no valid permit at the time the items were seized by the Conservation Officer, the Court was able to conclude the items were held for another without a taxidermy permit. As the Court was convinced of these conclusions beyond a reasonable doubt, it believes the evidence more than sufficient to sustain the convictions.

Next, Defendant contends the Court erred “by convicting Defendant of possession of a particular individual’s squirrel, where that squirrel could not even be identified.” The Conservation Officer testified that he found a black squirrel in a plastic bag in the freezer of Defendant’s shop and that the bag was labeled with a name. One John Wilton testified that he gave Defendant a black squirrel “probably five, six years ago”,⁴ and that he never got it back. While Mr. Wilton did testify that he could “not really” “tell the difference between one black squirrel and another one,”⁵ the Court believes the circumstantial evidence that the squirrel found on Defendant’s premises was indeed the squirrel given to Defendant by Mr. Wilton sufficient to sustain the conviction.

Next, Defendant contends the Court erred “by convicting Defendant of an offense for

3 The two counts which were dismissed were dismissed because there was no testimony to establish ownership by another.

4 N.T., June 11, 2007, at p. 75.

5 Id. at p. 76.

activity that took place in another state.” The Court assumes Defendant is referring to the conviction for possession of male antelope horns given to him by one Derek Ostrow inasmuch as Mr. Ostrow testified that he gave the antelope to Defendant in Wyoming, with the understanding that Defendant would bring it back to his shop in Pennsylvania to do taxidermy work on it. Since the horns were found in Defendant’s shop, however, Defendant possessed the horns in Pennsylvania and the fact he originally received the horns in Wyoming is of no moment. Defendant’s argument in this regard is without merit.

Next, Defendant contends the Court erred “by convicting Defendant of an offense for possessing an item it was testified was lent to him to display on his wall.” Defendant argues that “[w]hile taxidermy work was to be done on the item, it is uncontested that any work done on the item was done during a time when Defendant possessed a valid taxidermy license.” The Court is unsure to what Defendant is referring by this statement, as there was no evidence that any work at all was done on the item, simply that Defendant asked a member of a hunting club to borrow a deer head for purposes of refurbishing and then displaying it at his shop. The photograph of the head introduced at trial, taken at the time the head was confiscated by the Game Commission, shows that the item was not refurbished. Therefore, Defendant continued to possess the item for purposes of performing taxidermy work on it after his permit expired, and his argument in this regard is without merit.

Next, Defendant contends the Court erred “by convicting Defendant of an offense related to items that Officer Krebs never identified as being part of the search and items which the owner testified were returned to him.” The Court is again unsure of what Defendant is referring to by this statement, as a review of the record shows that Officer Krebs identified as part of the search all of the items which form the basis for the charges of which Defendant was convicted. With respect to “items which the owned testified were returned to him”, if Defendant is referring to Anthony Campana’s testimony that Defendant returned the antelope he gave him, the Court notes Defendant was acquitted of the charge based on possession of an antelope alleged to belong to Anthony Campana.

Finally, Defendant contends the Court erred “by convicting Defendant of multiple offenses, where only one offense could be alleged (the expiration of the license).” The expiration of the license was not the basis for Defendant’s conviction, however; rather, his possession of specimens for the purpose of performing taxidermy work on them after his license had expired was the basis for the convictions. As each charge of which Defendant was convicted was based on possession of a different item, the Court believes Defendant’s argument to be without merit.

Dated: January 9, 2008

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: DA
Matthew Zeigler, Esq.
Gary L. Weber, Esq.
Hon. Dudley Anderson