

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

EMIL COOPER,
Defendant

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CR-1464-2009
CRIMINAL DIVISION

OPINION AND ORDER

Emil Cooper (Defendant) was arrested on September 8, 2009 and charged with 18 Pa.C.S. §901(a) Criminal Attempt of a Homicide, 18 Pa.C.S. §2701(a) (1) Aggravated Assault Causing Serious Bodily Injury to Another, 18 Pa.C.S. §2701(a) (4) Aggravated Assault Bodily Injury with a Deadly Weapon, 18 Pa.C.S. §2702(a) (2) Simple Assault Bodily Injury with Deadly Weapon, 18 Pa.C.S. §2702(a) (1) Simple Assault, Causing Bodily Injury to Another, and 18 Pa.C.S. §907(a) Possession of an Instrument of Crime. A Non-jury Trial in this matter was held on June 8, 2011 and July 8, 2011. The Defendant waived his right to receive the verdict within seven (7) days pursuant to Rule 622 of the Pennsylvania Rules of Criminal Procedure to enable the Court sufficient time to review the testimony and argument and to prepare a written opinion in support of its verdict.

Factual Background

Officer Jeff Paulhamus (Paulhamus) of the Williamsport Bureau of Police (WBP) testified that on August 1, 2009, he was on routine patrol when he was dispatched to the intersection of the 600 block of Second Street and Locust Street. Upon his arrival, Paulhamus observed people standing on both sides of the street, and a black male, identified as Dakota

Walker (Walker) lying on his back on the front porch of 625 Second Street. Walker appeared to have blood on his upper body. Paulhamus observed what appeared to also be a blood splatter trail on the cement sidewalk starting at 637 Second Street and ending where Walker was lying at 625 Second Street. Walker appeared dazed and had a blanket covering his wounds. Paulhamus asked the bystanders on the south side of the street what happened, but no one would speak with him. However, Marvin Dyson (Dyson), who appeared to urgently need to speak with the police, motioned for Paulhamus to come over to where he was sitting in front of 638 Second Street. Dyson nodded his head in the direction of 640 Second Street to Paulhamus indicating the direction the attacker left the scene through an adjacent vacant lot. Dyson testified that he knew Walker from around the area for a period of about two months before the incident, and he knew the Defendant as “Saleem” and had seen him at Gwen’s¹ house for the last few months. Dyson was outside on Second Street where the Defendant and Walker were drinking beer when Dyson heard the two arguing over what he thought was gang related matters. Dyson then heard screaming and people yelling “he got stabbed” and then observed Walker bleeding and holding the left side of his chest.

Walker testified that on the night of July 31 into the morning of August 1, 2009, he had in fact had a disagreement with the Defendant over gang related matters. After the brief disagreement he then went into Smith’s house to hang out. While Walker was in the house, Carolyn Taylor (Taylor) asked Walker to ask Smith if she could give Taylor a ride to the store. Defendant, who was outside the house at the time, thought that Smith had touched Walker and said something to Smith. Once Smith and Taylor left for the store, Walker went back outside and was talking to other people when the Defendant came up to Walker and gave him what he

¹ Gwendolyn Smith – the Defendant’s girlfriend

described to be a body blow in the center of his chest which felt like “a painful pressure in his chest.” Walker saw that the Defendant had a “serious look”, was swinging at him, and hit him in the back, chest and arms. Walker did not know that he had been stabbed at first, but someone screamed that the Defendant had stabbed him, and Walker looked down and saw that he was in fact bleeding. Walker was then taken to the hospital where he underwent surgery for his injuries. After the incident, Walker testified that he was not able to watch his children for about six (6) months while recovering and he still experiences painful movement from side to side that he did not experience before the incident. Additionally, as of the time of trial in this matter, Walker is not able to lift objects over his head.

Both Taylor, who is the grandmother of Walker’s children with Brittany Taylor, and Smith confirmed Walker’s testimony that the two were not present at the time of the incident. Taylor testified that prior to the incident, she observed Walker and Saleem (Defendant) on the street and that the Defendant had just accused his girlfriend, Smith, of touching Walker. Smith acknowledged that the Defendant said something to her about touching Walker, but testified that she thought the Defendant was joking. Smith and Taylor left Second Street around 11:00 p.m. during which time the incident occurred. Upon their return to Second Street, Taylor and Smith observed a white male running down the sidewalk, and the two were then informed by Marvin that the Defendant “had just stabbed that boy” meaning Walker. Taylor then called 911; a tape of the call establishes that Taylor told dispatch Walker had been stabbed five (5) times, as this is what onlookers on the street had told her. Smith was aware that the Defendant possessed what he described as a “boy scout knife” but testified that she did not believe that the knife shown to her at trial was the Defendant’s knife. However, Paulhamus testified that Smith told him previously that the Defendant possessed a gray knife with a partially serrated blade.

Nadia Walker (Nadia) testified that on August 1, 2009 she was residing with Smith and she knew the Defendant as Smith's boyfriend. Two (2) to three (3) days prior to August 1, 2009, Nadia saw the Defendant with a folding, stainless steel knife, gray in color. Nadia identified the knife later found near the crime scene as appearing to be the same knife she had previously seen possessed by the Defendant. On the evening of July 31, 2009, Nadia heard the Defendant, Walker and Smith arguing in Smith's house. Later in the evening, Nadia was out with the Defendant and Smith until about 1 a.m. until they parted ways after arriving back on Second Street. Nadia went about five (5) or six (6) houses down, about sixty feet, and could see the Defendant and Walker standing in a group of about seven (7) people outside of Smith's house. Nadia then observed what she initially thought was horseplay between the Defendant and Walker; she saw the Defendant swing at Walker's abdominal and back area and make contact with his body. Walker then stepped back, and when he turned around and walked away his t-shirt was bloody. Agent Leonard Dincher (Dincher) of the Williamsport Bureau of Police later showed Nadia a mug shot of the Defendant and Nadia identified the Defendant as the person she saw swinging his arm towards Walker. Following Nadia's testimony in the preliminary hearing of this case, Smith began to harass her and asked her "why she said something."

Dr. Aaron Rabinovich (Rabinovich), a general surgeon, testified that on August 1, 2009, Walker came in to the emergency department with approximately eight (8) stab wounds to his chest, abdomen, arm and armpit, four (4) of which were reasonably serious injuries. The injuries to Walker's abdomen and chest were consistent with injuries caused by a knife. He described the injury to his chest penetrating about two (2) inches between the lung and chest wall. Based on the injuries Walker sustained, Rabinovich testified that Walker was at a high risk of lung collapse, or of bleeding to death from a chest cavity full of blood. Rabinovich explained that

about one and one half liters of blood was drained from his chest cavity. Rabinovich further testified that if Walker had not undergone surgery, it is likely he would have died. The stab wound to Walker's abdomen went through both his diaphragm and liver, which needed to be surgically repaired. In his notes, Rabinovich had that Walker's pain was described to be a ten (10) out of ten (10); however, when first coming to the hospital Walker's initial triage form describes Walkers level of his pain only as "moderate."

Cory Miller (Miller) testified that on August 2, 2009, he was taking the garbage out at his grandmother's house in the 600 block of West Third Street when he found a knife on the ground behind the garage. Miller picked up the knife, took it inside the house and called the police. The police came and collected the knife which appeared to have blood on it. Both parties stipulated that Officer Nathan Moyer would testify that he responded to a call for a found knife at 627 West Third Street on August 2, 2009, and that he took the knife and entered it into evidence. The location where the knife was found was only a short distance from the scene of the stabbing and consistent with the route that the Defendant took from the area.

At trial the Commonwealth also presented a video tape of the incident as recorded by surveillance cameras in the area. The video portrayed two (2) individuals, one who appeared taller than the other. Dincher testified that the person swinging at the second individual in the video appeared to be the same height and build as the Defendant. Following the incident on August 1, 2009, the police attempted to locate the Defendant at his mother's residences, but were unable to find him. The parties stipulated that on August 1, 2009, Sharon Cooper, the Defendant's mother, alternated residences between a house on First Street and a residence at 640 Second Street. The Defendant was apprehended on September 8, 2009. Dincher explained that when he observed the Defendant after his arrest, he believed the Defendant appeared to have lost

weight since the incident. The Defendant confirmed to Dincher that he had in fact lost weight as he had “been on the run.” Both parties stipulated to the fact that Lynette Mosely of Delaware County was the Defendant’s probation officer on August 1, 2009 and he reported to Mosley’s office on July 28, 2009, but failed to appear for his August 28, 2009 scheduled appointment.

Discussion

Credibility of Witnesses

“It is well established that the finder of fact is free to believe all, part, or none of the evidence.” Commonwealth v. Carter, 546 A.2d 1173, 1182 (Pa. Super. Ct. 1988). “It is [also] well settled that it is within the province of the trial judge, sitting without a jury, to judge credibility of the witnesses and weigh their testimony. Consequently, credibility determinations are generally not subject to review.” Id.

Criminal Attempt (Homicide)

The Defendant contends that the Commonwealth presented insufficient evidence that he intended to kill Walker, and that he must have acted with the specific intent to kill in order to be found guilty of Criminal Attempted Homicide. Conversely, the Commonwealth asserts that the evidence presented is more than sufficient to establish the Defendant’s intention to kill Walker.

According to Pennsylvania law, a person commits an Attempt when, with the intent to commit a specific crime, they do any act which constitutes a substantial step toward the commission of that crime. 18 Pa.C.S. 901(a). In order to commit the offense of Attempted Homicide, the Defendant must act with the specific intent to kill. Commonwealth v. Anderson, 538 Pa. 574, 650 A2d 20, 24 (Pa. 1994). Based on the evidence and testimony presented, the

Court finds that the Defendant was the person who attacked Walker, and that the Defendant, took a substantial step toward causing the death of Walker when he stabbed him multiple times with a knife. The Defendant's actions in stabbing Walker in the chest and abdomen where vital parts of the body are located as well as the aggressive actions of the Defendant approaching Walker satisfy to the Court beyond a reasonable doubt the Defendant intended to kill Walker. Again, the Court may infer that the Defendant acted with the specific intent to kill Walker by his use of the knife on the Defendant's chest and abdomen, which the Court defines below as the use of a deadly weapon on a vital part of the body. See Commonwealth v. Blackeney, 946 A.2d 645, 651-652 (Pa. 2008). In addition, the Court finds the Defendant's actions running from the scene, discarding the knife a short distance away and going into hiding as consciousness of his guilt in this incident.

Aggravated Assault Causing Serious Bodily Injury to Another and Aggravated Assault with a Deadly Weapon

The Defendant contends that the Commonwealth failed to present evidence that he intended to cause serious bodily injury to Walker. The Commonwealth contends that the manner in which the Defendant attacked Walker, coupled with the fact that Walker did suffer serious bodily injury, establishes the Defendant's guilt under both of the Aggravated Assault charges. A person commits the offense of 18 Pa.C.S. §2702(a)(1) Aggravated Assault if that person attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. A person commits the offense of 18 Pa.C.S. §2702(a) (4) Aggravated Assault with a Deadly Weapon if that person attempts to cause, or intentionally or knowingly causes bodily injury to

another with a deadly weapon. 18 Pa.C.S. §2301 defines serious bodily injury as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. 18 Pa.C.S. §2301 defines bodily injury as impairment of physical condition or substantial pain. 18 Pa.C.S. §2301 defines a deadly weapon as

[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.

As discussed above, the Court finds that the Defendant was the person who attacked Walker and that the Defendant attacked Walker with a knife. As to the charge of Aggravated Assault pursuant to 18 Pa.C.S. §2702(a)(1), the Court finds that the Defendant knowingly swung the knife at Walker in a seemingly violent and chaotic manner as well as the location of the knife blows constituting behavior under circumstances manifesting extreme indifference to the value of human life. Medical testimony supports the Commonwealth's claim that Walker did suffer serious bodily injury as a result of the multiple stab wounds he sustained to his chest and abdomen. Additionally, the Court finds Walker is permanently disfigured as the stab wounds left multiple scars on his body, he experiences pain when he moves from side to side that he did not have before the incident as well as a loss of mobility.

As to the charge of Aggravated Assault under 18 Pa.C.S. §2702(a)(4), the Court finds that the Defendant knowingly caused bodily injury to Walker by using the knife as a deadly weapon. Walker sustained bodily injury and pain as described by Rabinovich's testimony. Additionally, Walker testified to his physical condition and the pain he experiences when he moves from side to side that he did not have prior to August 1, 2009, and that he is not able to lift

objects over his head since then as well. The Court finds the knife is a deadly weapon as it was used in a manner and is capable of producing death or serious bodily injury as discussed above.

Simple Assault Bodily Injury with Deadly Weapon and Simple Assault Causing Bodily Injury to Another

A person commits the offense of Simple Assault 18 Pa.C.S. §2701(a) (1) if that person attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another. A person commits the offense of Simple Assault 18 Pa.C.S. §2701(a) (2) if that person negligently causes bodily injury to another with a deadly weapon. 18 Pa.C.S. §2301 defines bodily injury as impairment of physical condition or substantial pain. 18 Pa.C.S. §2301 defines a deadly weapon as

[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.

As discussed above, the Court finds that the Defendant intentionally caused Walker bodily injury with a knife.

Possessing an Instrument of Crime

The Defendant asserts that the Commonwealth failed to produce any witnesses to establish that the Defendant possessed a knife. However, the Commonwealth contends that the evidence is clear that the Defendant had a knife and that he used it to stab Walker. The Commonwealth contends that the Defendant carried a knife, the same knife that was found with what appeared to be blood on it by Miller in the 600 block of West Third Street, and that the medical evidence established that the victim was stabbed by an object. A person commits the

offense of 18 Pa.C.S. §907(a) Possessing an Instrument of Crime if that person possesses any instrument of crime with intent to employ it criminally.

Although the victim cannot place a knife in the Defendant's hand at the time of the assault, the Court finds circumstantially that the Defendant possessed a knife, and while fully extended the Defendant employed it criminally by stabbing at Walker. Multiple witnesses established that the Defendant owned a knife prior to the date of the incident and the witnesses' description of the Defendant's knife matched the knife presented by the Commonwealth as the weapon used to stab Walker; Nadia places the knife with the Defendant only two (2) to three (3) days prior to the incident and it was found a short distance from the location of the attack. Furthermore, the injuries Walker sustained to his chest and abdomen were consistent with injuries caused by a knife.

VERDICT

AND NOW, this ____ day of July, 2011, after a Non-jury Trial, the Court finds the Defendant guilty beyond a reasonable doubt of the following offenses:

1. Count 1 – Count 1 Criminal Attempt (Homicide)
2. Count 2 – Aggravated Assault
3. Count 3 – Aggravated Assault (Deadly Weapon)
4. Count 4 – Simple Assault (Deadly Weapon)
5. Count 5 – Simple Assault
6. Count 6 – Possession of an Instrument of Crime

It is Ordered and Directed that a Pre-Sentence Investigation report shall be prepared by the Pennsylvania Board of Probation and Parole.

Sentencing is scheduled for **October 18, 2011 at 3:30 p.m. in Courtroom No. 1, Lycoming County Courthouse, Williamsport, PA 17701.**

By the Court,

Nancy L. Butts, President Judge

xc: Ken Osokow, Esq.
Don Martino, Esq.
PBPP, APO
Deb Smith, CST
Amanda B. Browning, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)