

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 1472-2011  
vs. :  
:   
LARRY BURDEN, JR., :  
Defendant :

**OPINION AND NON JURY VERDICT**

This matter came before the Court on a bench trial on Count 4, Person Not to Possess a Firearm, which was severed from the other charges of the Information that were tried before a jury. The parties stipulated that the Court would make its determination based on the evidence presented at the jury trial, as well as the certified records of Defendant's prior convictions.

In order to obtain a conviction on this charge, the Commonwealth must prove the following elements beyond a reasonable doubt: (1) the defendant possessed a firearm and (2) the defendant was convicted of an enumerated offense that prohibits him from possessing, using, controlling or transferring a firearm. Commonwealth v. Thomas, 988 A.2d 669, 670 (Pa. Super. 2009); see also 18 Pa.C.S.A. §6015; PaSSJI (Crim) §15.6105.

The evidence presented at trial established that on October 9, 2011, the defendant possessed a handgun when he entered Rite Aide and ordered an employee to get behind the register and give him all the money. The employee handed the defendant \$149 in mostly one dollar bills. A customer observed the robbery, called the police and followed Defendant after he left Rite Aide. When the police approached Defendant a few blocks north of the Rite Aid, a wad of money fell from his waistband. The money totaled \$149 and consisted mostly of one dollar bills. The defendant said, "You got what you wanted." The

police, however, still arrested the defendant and, incident to the arrest, they retrieved a handgun from his person, which was introduced as Commonwealth Exhibit 1.

The jury also found the defendant guilty of possessing an instrument of crime, namely a concealed weapon.

The Court finds that the evidence presented at trial clearly showed that the defendant possessed a firearm.

The Commonwealth also presented certified records of Defendant's adult convictions and juvenile adjudications from Philadelphia County. The Commonwealth asserts that Defendant has an adult conviction for possession of a controlled substance with the intent to deliver in 2001 and a juvenile adjudication for robbery in 1996, either of which would make him a person prohibited by law from possessing a firearm.

The Court has carefully reviewed the certified records from Philadelphia County. The Court notes that it is not convinced beyond a reasonable doubt that Defendant has an adult conviction for possessing a controlled substance with the intent to deliver it (PWID). Although there was a guilty verdict, it appears it was only on the simple possession count.<sup>1</sup> The Court notes that the PWID count is crossed out and the possession charge is underlined with the word only written beneath it.

The Court, however, is convinced beyond a reasonable doubt that Defendant has a juvenile adjudication for robbery graded as a felony of the third degree. The certified records show that Defendant was found guilty of robbery (F3), simple assault (M2), theft by unlawful taking (M1), theft by receiving stolen property (M1) and criminal conspiracy (F3).

He was adjudicated delinquent and placed on probation.

A juvenile adjudication for any robbery offense in violation of 18 Pa.C.S.A. §3701, is an enumerated offense that prohibits a person from possessing a firearm. 18 Pa.C.S.A. §6105(c)(7).

Based on the foregoing discussion, the Court finds Defendant possessed a firearm and he has a juvenile adjudication for robbery that prohibits him from possessing a firearm. Thus, the Court finds Defendant guilty of Person Not to Possess a Firearm, a felony of the second, in violation of 18 Pa.C.S.A. §6105.

Defendant's assertions at the original sentencing hearing that he was never charged with or adjudicated delinquent of a robbery as a juvenile do not alter the Court's decision. First, the parties stipulated that the Court would base its decision on the evidence presented at the jury trial and the certified records. The certified records establish that Defendant has a juvenile adjudication for a robbery graded as a felony of the third degree. Second, the Court does not find Defendant's statements credible. Defendant understated his entire juvenile history. Not only did he deny the robbery charges, but he also denied his juvenile adjudication for delivery of a controlled substance in 1996, which was also supported by certified records.

Accordingly, the following Order is entered:

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<sup>1</sup> This finding would reduce Defendant's prior record score from a 5 to a 4.

**ORDER**

**AND NOW**, this \_\_\_\_ day of June 2012, the Court finds Defendant guilty of  
Count 4, Person Not to Possess a Firearm, a felony of the second degree, in violation of 18  
Pa.C.S.A. §6105.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)  
Jeana Longo, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File