

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-866-2011
vs. :
:
SHACCOOR TRAPP, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant's Motion for Arrested Judgment or Alternatively to Dismiss Remaining Charges due to Double Jeopardy filed on June 15, 2012.

By Information filed on May 31, 2011, Defendant was charged with attempted homicide, aggravated assault by causing or attempting to cause serious bodily injury, aggravated assault by causing bodily injury with a deadly weapon, burglary, criminal trespass, person not to possess a firearm, possession of an instrument of crime, recklessly endangering another person, and simple assault.

On May 29, 2011 during the early morning hours, Defendant is alleged to have illegally entered 606 Maple Street and assaulted a 23 year old female in an upstairs bedroom by shooting, stabbing and choking her.

The persons not to possess a firearm charge was severed for trial purposes. A jury trial was held on the remaining charges from June 5, 2012 to June 7, 2012. Prior to the jury trial beginning on the remaining charges, the parties stipulated that the Defendant would proceed to a non-jury trial on the persons not to possess charge.

At the conclusion of the evidence to be submitted to the jury, Defendant waived his right to proceed to a jury trial on the persons not to possess charge. Specifically, Defendant was placed under oath and asked a series of questions regarding his decision to

waive a jury trial on the persons not to possess charge.

Most importantly, the Court questioned Defendant as follows:

“Other than the differences I explained to you, the one major difference is that I will reach a verdict one way or another. A jury could not decide. In other words, there might be 6-4, 6 again, whatever it is. Six vote one way, six vote another way. Might be 11 to 1 and if they can’t reach a decision, then that would be a mistrial, and then we would come back and do another trial at a later time if that’s what the Commonwealth wanted to do. I will make a decision one way or the other. Do you understand that?” In response to this, Defendant answered, “Yes.” (Transcript, p. 107).

During Defendant’s trial, he was represented by two attorneys from the Lycoming County Public Defender’s office: William Miele, the Chief Public Defender; and Nicole Ippolito, an Assistant Public Defender. Both attorneys were present during the aforesaid exchange between the Court and Defendant, as well as during Defendant’s entire colloquy when he waived his right to a jury trial. Immediately following the Court advising the Defendant that it would make a decision “one way or the other,” the Court specifically asked Mr. Miele and Ms. Ippolito if there was anything more “on the colloquy.” Ms. Ippolito responded, “No, your Honor.”

By Order of Court entered on June 7, 2012, the Court found that following a colloquy, the Defendant had knowingly, intelligently, involuntarily waived his right to a jury trial in connection with Count 6, persons not to possess a firearm.

Subsequently, the jury began deliberating and the Court took additional

evidence on the persons not to possess a firearm charge. The jury deliberated but could not reach a verdict. As a result, by Order of Court dated June 7, 2012, the Court noted that the jury was hopeless deadlocked and that further deliberations would not result in the unanimous verdict as required by law and accordingly declared a mistrial.

By Opinion, Verdict and Order filed on June 14, 2012, the Court adjudicated Defendant guilty on Count 6, persons not to possess or use a firearm. Sentencing was scheduled for October 9, 2012.

On June 15, 2012, Defendant filed a Motion for Arrested Judgment or Alternatively to Dismiss Remaining Charges due to Double Jeopardy. Argument on said Motion was subsequently held on July 30, 2012.

Defendant argues that it was his understanding that the Court would render a verdict on the persons not to possess charge once the jury reached a verdict. (Motion for Arrested Judgment, paragraph 4). Defendant also argues that it was both his and his counsel's understanding that the Court would render a verdict on the severed count based upon the determination of a jury verdict. (Motion for Arrested Judgment, paragraph 6).

Contrary to Defendant's assertion, the record is clear. Defendant was advised of his right to a jury trial on the persons not to possess charge, of the process that would be involved in connection with said jury trial and of the fact that the jurors would need to reach a unanimous decision. Additionally, Defendant advised the Court that it was his decision to waive his right to a jury trial and to proceed with a non-jury trial before the Court in which the Court would decide the charge based upon the evidence presented to the jury and on

additional evidence that would be submitted only to the Court outside of the jury's presence. Determinatively, and in the presence of his attorneys who not only failed to object but who acquiesced in such, Defendant was advised that while the jury might not be able to reach a decision and a mistrial could be declared, the Court would, in fact, render a verdict. If Defendant believed that the Court would not render a verdict if the jury was unable to reach a verdict, such a belief was not made known to the Court by either Defendant or his counsel. If Defense counsel improperly advised Defendant that the Court would not render a verdict if a mistrial was declared with respect to the jury, said representation was contrary to the directive specifically given to Defendant in his attorneys' presence while on the record. Defendant's remedy, if any, will need to be based on an ineffectiveness claim.

Defendant argues that once the jury could not reach a verdict, the Court was also obligated not to reach a verdict on the severed charges. In support of this argument, Defendant relies on the Superior Court decision in Commonwealth v. Wallace, 411 Pa. Super. 576, 602 A.2d 345 (1992) on the concept of collateral estoppel.

Preliminarily, the Court notes that Rule 622 of the Pennsylvania Rules of Criminal Procedure mandate that a verdict be rendered in all non-jury cases within seven (7) days after trial. Pa. Cr. P. 622 (A). Indeed, a delay in a notice of a verdict in a bench trial has been determined to implicate a Defendant's speedy trial rights. Commonwealth v. McLean, 869 A.2d 537, 538 (Pa. Super. 2005).

Defendant's reliance on Wallace is misplaced. The defendant in that case was

charged with numerous offenses including firearm offenses. The firearm offenses were severed for trial purposes. After a jury trial on the other charges, the defendant was acquitted.

Following the acquittal, Defendant filed a motion to dismiss the firearm charges based upon collateral estoppel. The trial court denied the motion.

On appeal, the defendant asserted that the jury's verdict in the first case precluded trial on the remaining charge because the verdict of the jury represented a factual finding that defeated the viability of the remaining charge.

On appeal, the Superior Court noted that the doctrine of collateral estoppel prevents relitigation between parties of an issue that has been previously decided by a competent legal forum.

In reversing the trial court, the Superior Court first concluded that by requesting a severance, the defendant did not waive any collateral estoppel protections. Next, the Court agreed with the defendant that the doctrine of collateral estoppel precluded prosecution of the severed charge. Specifically, the Court noted that because the jury determined that the defendant either did not have a gun or that they were not convinced beyond a reasonable doubt that he had a gun, it would be offensive to collateral estoppel principles and in fact "a severe injustice to allow the Commonwealth another chance to convict appellant in a second trial simply because that charge was severed to ensure an unprejudiced jury." 602 A.2d at 349.

In determining the applicability of collateral estoppel from a general verdict

of acquittal, the Court noted that it must “examine the record from the prior proceeding, taking into account the pleadings, evidence, charge and other relevant matter, and conclude whether a rational jury could have grounded its verdict upon an issue other than the one the defendant is seeking to foreclose from consideration.” Wallace, 602 A.2d at 349 n.1, citing Ashe v. Swenson, 397 U.S. 436 90 S. Ct. 1189 (1970) and Commonwealth v. Schomaker, 501 Pa. 404, 461 A.2d 420 (1983).

In the posture that Defendant raises his collateral estoppel claim in this case, the doctrine clearly does not apply. No issue was previously decided by the jury which would estop the parties from re-litigating such.

Alternatively, Defendant argues that the doctrine of collateral estoppel prevents the Commonwealth from re-litigating the issue previously determined by the Court. Had the Court decided beyond a reasonable doubt that the Defendant was not the individual who attacked the victim and was not in fact the individual who possessed and used the firearm, Defendant’s collateral estoppel argument may have merit. Quite simply, however, Defendant did not prevail in the bench trial; the Commonwealth did. Under the circumstances of this case, utilizing collateral estoppel principles would preclude Defendant from contesting the fact that he possessed a firearm on the date in question and perhaps preclude him from presenting evidence that he was not the individual who shot Ms. Nixon, because a court of competent jurisdiction has already decided such ultimate facts. Such an outcome, though, would result in a denial of Defendant’s right to a trial by jury and his due process rights, as well as strip him of the presumption of innocence. Such an absurd result is

untenable. It is for these reasons that, in the criminal context, the use of the doctrine of collateral estoppel is considerably restricted, especially where the Commonwealth seeks to use it against a criminal defendant. Commonwealth v. States, 595 Pa. 453, 938 A.2d 1016, 1020 (2007); see also United States v. Dixon, 509 U.S. 688, 710 n.15 (1993)(“Under Ashe v. Swenson, 397 U.S. 436, 25 L.Ed.2d 469, 90 S.Ct. 1189 (1970), an acquittal in the first prosecution might well bar litigation of certain facts essential to the second one – though a conviction in the first prosecution would not excuse the Government from proving the same facts the second time.”).

Defendant also argues that the decision in States, supra, is also controlling. The decision addressed the principles of double jeopardy in the context of a simultaneous jury/bench trial for multiple criminal offenses.

The issue in the case was whether a mistrial on some of the charges due to a hung jury, coupled with an acquittal in the bench trial, implicated double jeopardy protections such that a re-trial could not occur.

Contrary to what Defendant argues, the Pennsylvania Superior Court has specifically held that in a consolidated jury/non-jury trial, the trial court is not required to defer to the findings of the jury on common factual issues. Commonwealth v. Wharton, 406 Pa. Super. 430, 594 A.2d 696, 699 (Pa. Super. 1991). The Wharton case was cited with approval by the Pennsylvania Supreme Court in States. 938 A.2d at 1024-1025.

In analyzing the arguments of the various parties as well as authority from other jurisdictions in what was then an issue of first impression, the Supreme Court held that

under the circumstances of the case, the prohibition against double jeopardy, encompassing issue preclusion or what is known as collateral estoppel, precluded the Commonwealth from retrying the defendant. The Court noted that the Commonwealth's agreement to proceed with the simultaneous jury/bench trial carried with it a risk, although one perhaps not foreseen by the Commonwealth, that the trial court would reach a verdict in the defendant's favor and the jury would not reach a verdict at all. Accordingly, "[t]here existed a final order definitively establishing that [the defendant] was not the driver of the car and a scheduled retrial at which the Commonwealth planned to offer evidence to establish that [the defendant] was the driver of the car." 938 A.2d at 1026.

The Supreme Court concluded that the Defendant's double jeopardy rights precluded such because they "bar redetermination... of [an] issue [that was] necessarily determined between the parties in a [prior] proceeding which has become a final judgment." *Id.* at 1027, citing Commonwealth v. Smith, 518 Pa. 15, 540 A.2d 246, 251 (1988).

The focal premise upon which the decision was reached was the fact that the judge in the non-jury portion of the case entered a final judgment in the defendant's favor. Accordingly, the defendant's double jeopardy rights would have been implicated on the retrial. States is clearly inapplicable to the facts of this case. Indeed, unlike the scenario in States, Defendant was found guilty, not acquitted, of the charge. In order to proceed on retrial, the Commonwealth will not have to present evidence on an issue that has already been decided in Defendant's favor. To the contrary the issue has been decided against Defendant.

“The prohibition against double jeopardy protects against a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense.” Commonwealth v. McCane, 517 Pa. 489, 539 A.2d 340, 345-46 (1988), citing North Carolina v. Pierce, 395 U.S. 711, 89 S.Ct. 2072 (1969). Defendant’s double jeopardy rights, including his collateral estoppel rights, are not implicated because none of these scenarios occurred.

Generally, a mistrial because of the inability of a jury to reach a verdict does not fall within the double jeopardy protections and therefore is not a bar to re-prosecution. McCane, 539 A.2d at 346. The Commonwealth clearly has a right to try Defendant on the remaining charges and such is not precluded by double jeopardy or collateral estoppel.

Accordingly, Defendant’s Motion for Arrested Judgment or Alternatively to Dismiss Remaining Charges due to Double Jeopardy shall be denied.

ORDER

AND NOW, this ___ day of September 2012, following an argument and the submission of Briefs, Defendant’s Motion for Arrested Judgment or Alternatively to Dismiss Remaining Charges due to Double Jeopardy is **DENIED**.

The Court also DENIES Defendant’s request to certify this matter for an interlocutory appeal.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Nicole Ippolito, Esquire (APD)
Work File
Gary Weber, Esquire