

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-866-2011

vs. :

SHACOR TRAPP, :
Defendant :

OPINION, VERDICT AND ORDER

On May 31, 2011, Defendant was charged with numerous criminal counts, including but not limited to, Persons not to Possess a Firearm in violation of 18 Pa. C.S.A. § 6105 (a) (1), a felony 2 offense.

Said 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 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, the Defendant waived his right to proceed to a jury trial on the Persons not to Possess charge, the Commonwealth presented a certified copy of Defendant's prior conviction for indecent assault and unlawful restraint and incorporated the jury trial evidence. Commonwealth Exhibit 48 is a certified copy from the Municipal Court of Philadelphia verifying that on July 9, 2010, Defendant pled guilty and was subsequently sentenced on Indecent Assault, a misdemeanor 1 offense and Unlawful Restraint, a felony 2 offense. Defendant presented no additional evidence and incorporated the evidence he presented before the jury.

Following lengthy deliberations, the jury deadlocked and a mistrial was declared.

According to 18 Pa. C.S.A. § 6105 (a) (1), a person who has been convicted of

an enumerated offense within this Commonwealth shall not possess or use a firearm in this Commonwealth. The enumerated offenses include among other things, unlawful restraint.

The parties stipulated that because of Defendant's prior record he was prohibited from possessing a firearm. The issue to be determined by this Court is whether the Commonwealth has proven beyond a reasonable doubt that Defendant in fact possessed a firearm on or about May 29, 2011.

Tiffany Nixon testified that on May 29, 2011, she was awoken in the early morning hours believing that she was being "punched" in her chest. In fact, she was being stabbed by a person that she described during the trial as being African American, wearing a white or cream colored hoodie and who looked familiar. She testified that she had seen the individual previously around the neighborhood.

The perpetrator of the offense ended up not only stabbing Ms. Nixon but also choking her and eventually shooting her in her cheek, temple area and knee.

Ms. Nixon testified that she had an ample opportunity to identify the individual who shot her and during the trial positively identified the Defendant as her assailant.

When Ms. Nixon first spoke with the police immediately following her attack, she testified that she was not thinking clearly. She was confused, scared and in pain. Furthermore, she was worried about her physical condition and most of all about her children. As a result, she was unable to provide any specifics regarding her assailant to the police.

Ms. Nixon was transported by ambulance to the Williamsport Emergency Room where she was assessed and then lifeflighted by helicopter to Geisinger Medical Center.

She underwent emergency treatment, was admitted to the Intensive Care Unit and was intubated.

She started writing notes as her recollection of what occurred became clearer and as she testified her “memory got better.” Among other things, she recalled that the attacker wore a white or cream colored hoodie and shot her with a small silver gun.

Her sister visited her in the hospital and based upon information her sister had received from others, showed Ms. Nixon three photographs obtained from Facebook of three different individuals. One of the photographs was of the Defendant.

According to Ms. Nixon, the photos jogged her memory and she recognized the Defendant as her attacker.

Subsequently, Ms. Nixon identified the Defendant from a photo array that had been presented to her by the Williamsport Police. Without any suggestions being made to her, she quickly picked out the Defendant and identified him as her attacker. The photo array picture of the Defendant was not the same Facebook photograph she had previously recognized.

According to Ms. Nixon, there was no doubt in her mind that the Defendant was the individual that attacked her. She had previously seen the Defendant “quite often” outside of where she resided, among other things, smoking cigarettes.

During her testimony, Ms. Nixon positively identified the Defendant as her attacker.

Officer Levan of the Williamsport Bureau of Police confirmed that when he first contacted Ms. Nixon immediately following the attack, she was hysterical, crying obsessively,

frantic, “absolutely” upset, unsteady and suffering from a “gross amount” of blood loss.

Agent Eric Delker of the Williamsport Bureau of Police confirmed the victim’s testimony with respect to the photo array. He indicated that when he present the array to Ms. Nixon, there was nothing suggestive about it and he asked that she look at it closely to determine if there was anyone who she recognized. Ms. Nixon identified the Defendant and indicated that she was absolutely sure that he was the individual who attacked her and shot her.

A neighbor, Shana Saunders, credibly testified that a few nights before the attack she had an encounter with the Defendant. She heard the Defendant fire a handgun and saw him with a small silver gun. The Defendant asked Ms. Saunders not to tell anyone what she observed. Ms. Saunders also saw the Defendant in front of his apartment, a few doors from the victim’s apartment, only a few hours prior to the attack.

Agent Leonard Dincher of the Williamsport Bureau of Police indicated that following Ms. Nixon’s identification of Defendant and further investigation, a warrant was issued for Defendant’s arrest. He obtained information that the Defendant was at 523 High Street. He and other police officers searched the residence and eventually found the Defendant lying between ceiling joists in the rafters below the roof hiding from the police. The Defendant was attempting to evade apprehension by hiding in an area of the home that was very inaccessible and in an area that was extremely hot with no ventilation whatsoever.

As well, a pair of bloody socks was located at Defendant’s residence. The blood was tested from the socks and a DNA expert testified that the DNA in the blood was consistent with that of Ms. Nixon. The expert opined that the chances of the blood being similar to the

DNA of another person were extremely small.

Defendant argued that Ms. Nixon's identification of the Defendant could not be relied upon for several reasons. Defendant argued that when initially confronted by the police, Ms. Nixon could not even recall the race of the attacker. Furthermore, Defendant argued that Ms. Nixon's eventual identification of the Defendant was unduly suggestive by virtue of the fact that her sister and perhaps others first identified the Defendant. Defendant argued that Ms. Nixon's identification was also based on her psychological desire to have a perpetrator caught instead of roaming free.

With respect to Ms. Saunders seeing the Defendant with a gun, Defendant argued that her testimony was not credible in light of her failure to take any action regarding such, and her animosity toward Defendant.

With respect to Defendant hiding from police, Defendant argued that there was an outstanding warrant for Defendant's arrest on other charges and that it was equally consistent that he would be hiding from police as a result of that warrant and not because of any criminal conduct he committed with respect to Ms. Nixon.

Finally and with respect to the bloody pair of socks found in Defendant's apartment, Defendant argued that he did not wear those types of socks, that his backdoor was broken into and that the socks were either planted by someone who wanted to inculcate the Defendant or perhaps the real perpetrator who had access to Defendant's apartment.

As the Court previously referenced, in order to obtain a conviction of Persons not to Possess, the Commonwealth must prove beyond a reasonable doubt that the Defendant possessed a firearm and that he was convicted of an enumerated offense that prohibited him

from possessing or using a firearm. Commonwealth v. Thomas, 988 A.2d 669 (Pa. Super. 2009).

The Court finds that the Commonwealth has met its burden of proof. Defendant does not contest that he was previously convicted of an enumerated offense that prohibited him from possessing or using a firearm. Furthermore, Defendant does not contest that a firearm, as the term is defined by law, was possessed by the victim's attacker. Defendant only contests that he was Ms. Nixon's attacker.

In reviewing all of the evidence, the Court concludes that the Defendant was in fact the individual who attacked Ms. Nixon and was in fact the individual who possessed and used a firearm.

Ms. Nixon positively identified the Defendant as her attacker to her sister while at Geisinger, to Agent Delker at a non-suggestive photo array while at Geisinger, and in court. All of these identifications were immediate and sure. There was no hesitancy whatsoever. Ms. Nixon's failure to provide specifics immediately following the attack and during the few days after the attack, does not cause the Court to doubt her identification. Indeed, given the vicious nature of the attack, the injuries suffered by the victim and the victim's stated concerns, it is entirely logical that her recall of the event and the identity of her attacker became more clear as time went on. Furthermore, there is nothing at all suggestive about the identifications. The cell phone "Facebook" identification was one out of three separate pictures with no testimony whatsoever that any suggestiveness was present. The photo array was one out of eight pictures that included a different picture of the Defendant than what was presented to her by her sister. The victim was familiar with the Defendant through his presence in the area on previous

occasions and while being traumatized by a vicious attack, the victim clearly had an opportunity to observe her attacker. The Court finds Ms. Nixon's testimony credible.

Secondly, Ms. Saunders' testimony places the Defendant near the crime scene immediately prior to it as well as in possession of a similar handgun.

Third, the Defendant hiding from the police between ceiling joists of an attic laying in insulation in a dark and hot area is certainly consciousness of guilt. The suggestion that he was hiding as a result of a prior warrant begs logic and is pure speculation in light of the fact that the Defendant was not evading police and in fact openly walked around in public until the incident involving Ms. Nixon occurred.

Finally, the bloody socks in Defendant's residence which contained Ms. Nixon's DNA also strongly supports Defendant's guilt. The Court fails to find the testimony of Defendant's wife regarding her contention that Defendant never wore anything other than ankle socks that did not have grey toes or grey heels, not credible. In fact, the Defendant clearly wore socks with grey toes and grey heels as such were found on him when he was arrested. While the socks found in Defendants' residence were tube socks and not ankle socks, this differentiation is not determinative.

The suggestion by Defendant that the house was broken into and the socks were planted is nothing more than speculation. The Court can easily ascertain a scenario in which the Defendant committed the crime, discarded the evidence including any bloody clothing but forgot the bloody socks which were not located in the open but next to a couch in the living room area. Furthermore, there is no scenario that the Court can conceive of in which any individual could obtain a pair of white socks and then splatter them with Ms. Nixon's blood

and then plant them in Defendant's home.

Viewing the socks, it was evident to the Court that there were areas of blood that had splattered and/or had dropped on the socks, and perhaps other areas in which the perpetrator while wearing the socks stepped in blood. The Court also notes that photographs of the crime scene were introduced many of which showed bloody splatters and some pools.

VERDICT

Given this evidence and the Court's conclusion that the Commonwealth has proven its case beyond a reasonable doubt, the Court adjudicates the Defendant **GUILTY** on Count 6, Persons not to Possess or use a Firearm, a felony 2 offense. Sentencing is scheduled for **October 9, 2012 at 11:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse. While the Court recognizes that this sentencing date is beyond 90 days, Defendant's right to be sentenced within 90 days is presumptive and this date is the only date that the Court has available for sentencing.

The Court directs the Pennsylvania Board of Probation and Parole to conduct and prepare a Presentence Report.

By The Court,

Marc F. Lovecchio, Judge

cc: CA
A. Melissa Kalaus, Esquire (ADA)
Nicole Ippolito, Esquire (APD)
Pennsylvania Board of Probation & Parole
Work File
Gary Weber, Esquire