

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 99-10,985  
:   
vs. :   
:   
MAURICE HILL, :   
Defendant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Judgment of Sentence dated January 26, 2000. The relevant facts are as follows.

An armed robbery occurred outside the Taco Bell Restaurant at or about 2:09 a.m. on January 17, 1999. Gina Wilborn (a manager of Taco Bell) and two (2) employees, Scott Thompson and Brad Lummis, were leaving the restaurant to make the night bank deposit. N.T. p. 44. Mr. Thompson and Mr. Lummis went out of the restaurant first and waited for Ms. Wilborn near a vehicle. As Ms. Wilborn exited the building, she heard a noise and observed a person approaching her from her left. N.T. p. 45. The person, who seemed to coming from behind the building, was wearing military-type camouflage clothing, black gloves on his hands and a black mask over his head. N.T., p. 47-48. The person also appeared to have a gun in his hand. N.T. p. 48.<sup>1</sup> When the person got up close to Ms. Wilborn, she noticed the gun had a silver barrel. N.T., p. 48. The person told her to give him the money. Ms. Wilborn recognized the voice and the

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<sup>1</sup>Ms. Wilborn testified as follows:  
I saw the barrel of it and I took it to be a gun. N.T., p. 48.

basic appearance of the man, whom she identified as Maurice Hill, the defendant in this matter. N.T., p. 50.

The money, totaling \$1,962,85, was in a purse strapped across Ms. Wilborn's shoulder. Ms. Wilborn dropped the purse and ran away from the defendant. As she ran, Ms. Wilborn was afraid that she was going to be shot in the back. N.T., p. 51. She looked back at the defendant and she noticed he was "waving the gun" at the other two employees. N.T., p. 52.

Ms. Wilborn testified that she had a meeting with the defendant at approximately 8:15 a.m. the previous day. N.T., p. 52. The defendant was an employee of Taco Bell for about four (4) months and he had an ongoing problem of being late for work or calling at the last minute to say he couldn't come in. Because of these problems Ms. Wilborn was considering terminating his employment at Taco Bell, but she wanted to hold the meeting with him in order to make the final decision on termination.

The defendant appeared for the meeting at 8:15 a.m. and Ms. Wilborn explained the problems she had with him. She told him she had decided to terminate his employment and she wanted to tell him fact-to-face. N.T., p. 53. The defendant appeared angered by this decision and he reacted by saying "you're just going to fire me like that". N.T., pp. 53-54.

Ms. Wilborn testified she saw the defendant dressed in camouflage gear on other occasions when he would drop by the restaurant. N.T., p. 54. The Commonwealth also presented a photograph of the defendant in camouflage gear, which Ms. Wilborn identified as the way the defendant dressed.

See Commonwealth's Exhibit 5 and N.T., pp. 54-55.

Ms. Wilborn was positive and certain of her identification of the defendant as the perpetrator of the crime. In fact, she testified: "I am one hundred percent sure that the person that robbed me that night was Maurice Hill". N.T., p. 60. She testified on cross-examination that she immediately recognized the defendant to the point that she almost said "Reese, what are you doing?" N.T., p. 72.

Brad Lummis testified that he was one of Taco Bell's employees who was helping Gina Wilborn deposit the restaurant's receipts after closing on January 17, 1999. He saw someone run up to Ms. Wilborn from behind the building waving a gun and demanding the money. N.T., p. 100.

Ms. Wilborn was near the front door of the Taco Bell heading out to the vehicle where he and Scott Thomas were waiting for her. N.T., pp. 100-101. Mr. Lummis described the perpetrator as being of medium build, wearing camouflage and a mask. N.T., p. 101. Mr. Lummis described the gun as silver in color and he noted "it looked like a handgun". He identified Commonwealth Exhibit 1 and said it looked like the gun the defendant waved. N.T. 102. Mr. Lummis testified the perpetrator chased Ms. Wilborn, grabbed the purse with the money and took off. N.T., p. 103. Mr. Lummis could not make a positive identification of the perpetrator, but he thought it was an individual who used to work with them, Maurice Hill, the defendant. N.T., p. 104. He noted the voice he heard sounded like the defendant's voice, although he could not be 100% certain in his identification. N.T., p. 105. Mr. Lummis was about twenty (20) feet away from the area where the defendant confronted Ms. Wilborn. N.T., p. 106.

The third employee, Scott Thompson, testified that a person in a camouflage coat, bottoms and military boots, wearing a ski mask pulled over his face, came out from behind a dumpster and pointed a gun at Gina Wilborn and yelled at her. N.T., pp. 160-161. Ms. Wilborn screamed just take it and gave the purse to him. The perpetrator then chased her as she ran. Mr. Thompson testified the perpetrator then ran towards he and Mr. Lummis, pointed his gun at them and told them not to move. N.T., p. 161. The perpetrator then ran off toward Tinsman Avenue. N.T., p. 161. Mr. Thompson and Mr. Lummis then went over to get Ms. Wilborn and call 911. N.T., p. 161. Mr. Thompson described the gun as silver with a barrel about eight (8) inches long. N.T., p. 162. Mr. Thompson also identified Commonwealth Exhibit 1 as the type of gun used. N.T., p. 162. Mr. Thompson could not make a certain identification of the perpetrator, but when he heard the voice the first thought in his mind was "Reese, what are you doing?" The witness indicated Reese is the defendant, Maurice Hill. N.T., pp. 162-163. Mr. Thompson noted that the size of the perpetrator, along with the way he moved, made him immediately think of the defendant. N.T., p. 164.

Beyond the identification evidence presented by the eyewitnesses, the Commonwealth also produced circumstantial evidence of the defendant's involvement in the crime.

Aronda Hill testified the defendant, who is Ms. Hill's nephew, was living with her and her two children in late December 1998 and early January 1999. Around Christmas time, the defendant purchased a toy western gun for her sons. The witness didn't like the gun and she hid it from her sons. N.T., p. 13. Ms. Hill discovered the gun

was missing from her home when the State police came to her home on or about January 17, 1999 looking for the defendant concerning the Taco Bell robbery. When the police came into Ms. Hill's home, they noticed an orange knob on a table. The orange knob was on the tip of the gun when Ms. Hill first saw it at Christmas time. Ms. Hill did not take the orange knob off of the gun, and the knob was on the gun when she hid the gun in a closet. N.T., pp. 15-16. She confirmed the gun was not in her closet when she looked for it after the police spoke with her on January 17, 1999. N.T., p. 22.

Ms. Hill also testified to a phone conversation she had with the defendant during the early morning hours of January 17, 1999. A girlfriend of the witness, Bonita Darrington, called her around 4:00 a.m. Ms. Darrington informed Ms. Hill that her nephew was drunk and high, he was counting money and she wanted him out of her house. N.T., p. 16. Ms. Hill then spoke to the defendant on the phone. The defendant complained that Taco Bell fired him for no reason. He was angry and was cursing Taco Bell. N.T., p. 17.<sup>2</sup>

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<sup>2</sup>Ms. Hill gave a written statement to the police that indicated that the defendant during the phone conversation, admitting robbing the Taco Bell that night. See Commonwealth Exhibit 3. In Ms. Hill's trial testimony, she denied that the defendant actually told her he robbed the Taco Bell that night. Ms. Hill's only explanation for saying the defendant admitted to the Taco Bell robbery in her written statement was as follows:

Q. Why did you put in your statement on September 15, 1999, that he told you he robbed Taco Bell?

A. Because I was trying to get it out of him by what people were saying that night. I was asking him what id you do?

Q. And it was your impression?

A. Yeah.

Finally, Ms. Hill testified that the defendant wears Timberland boots. She testified he has dozens of them and that's all he buys. N.T., p. 19.

Trooper William Holmes testified that he was called out to investigate the Taco Bell robbery on January 17, 1999. N.T., p. 32. Upon arriving at the scene, he inspected the property and he found a fresh set boot prints close to the Taco Bell building. He also found a similar set of boot prints in a yard of a residence nearby. N.T., pp. 33-34. The State police collected impressions of these boot prints. N.T., p. 34. The prints were in the area from which the victim and others told the trooper that the suspect had run. N.T., pp. 34-35. The State police determined that the boot prints were made by Timberland boots. N.T., p. 36.<sup>3</sup>

Michelle Fox, another employee of Taco Bell, testified that the defendant called at home on January 16, 1999, the day the defendant was terminated from his employment with Taco Bell, and asked her who was working and what manager would be closing that night. N.T., p. 116.

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Q. From based on your conversation?

A. Yes.

Q. What made you put that statement in your written statement to the police?

A. Yeah. N.T., pp. 18-19.

<sup>3</sup>The defendant in cross-examination of the Trooper did establish that when he arrested the defendant on June 11, 1999, he obtained a pair of boots from the defendant, but that this pair of boots did not match the cast of the boot prints taken near the Taco Bell on January 17, 1999. The overall length of the defendant's boots matched the cast of the boot outsole, but the tread design was not consistent. See N.T., pp. 35-40.

Kerry Aderhold testified that she used to date the defendant. Ms. Aderhold lived at 1757 Randall Circle. The defendant kept some of his things in her home. About two (2) weeks prior to the Taco Bell robbery, the defendant asked her whether she knew anyone that had guns. N.T., p. 123. She told him she was not aware of where he could obtain a gun. Ms. Aderhold also testified the police came to her door looking for the defendant the morning after the Taco Bell robbery. About a day later, when Ms. Aderhold went out to put trash in her garbage container outside her apartment, she noticed a toy gun and a glove. N.T., p. 121. In the past, she had seen the defendant wear the glove, which was marked Commonwealth Exhibit 7. The glove was outside the garbage can. The toy gun was lying at the bottom of the can. N.T., p. 127. Ms. Aderhold also testified she saw the defendant the day of the robbery and he was wearing Timberland boots. N.T., p. 128. Ms. Aderhold called the police within days after the robbery to report finding the toy gun and the glove. Trooper Ronald Clark of the Pennsylvania State Police then responded and recovered the toy gun and glove on January 18, 1999. N.T., p. 150.

## **DISCUSSION**

In his Statement of Matters Complained of on Appeal, the defendant raises three (3) issues. First, the defendant contends the evidence was insufficient to convict him of robbery by threatening another with or intentionally putting another in fear of immediate serious bodily injury. 18 Pa.C.S.A. §3701(a)(ii). Although the defendant used a toy gun in the robbery, this is of little moment to the victims. The defendant accosted victim Gina Wilborn in the dead of night, while brandishing what appeared to be a gun. He wore a

mask. He demanded money. Clearly, Ms. Wilborn was terrorized by this experience. The evidence shows she basically dropped the money and ran for her life. As she ran, she feared she was going to be shot in the back. N.T., p. 51. This evidence was sufficient for the jury to conclude that the defendant's conduct put Ms. Wilborn in fear of imminent serious bodily injury. See Commonwealth v. Hurd, 268 Pa.Super. 24, 407 A.2d 418 (1979)(appellant's demand of the cashier to open the cash drawer while his right hand was in his pocket and there was something in the pocket pointed at the cashier was sufficient evidence for the jury to find that the appellant threatened the cashier with what he intended her to believe was a gun).

The defendant also contends the evidence was insufficient to prove the simple assault by physical menace counts as to victim Wilborn, Lommis and Thompson. 18 Pa.C.S.A. §2701(a)(3). The Court believes this conduct is clearly sufficient to sustain the conviction for these three (3) counts. Ms. Wilborn testified the defendant waved the gun at the other two employees after he confronted her. N.T., p. 52. While Mr. Lommis and Mr. Thompson were not as directly confronted by the defendant compared to Ms. Wilborn, they were within twenty (20) feet or so of the robbery. They believed the defendant had a gun. N.T., P. 106. Mr. Thompson testified that when the defendant chased Ms. Wilborn, he ran towards him and Mr. Lommis, pointed his gun at them and told them not to move. N.T., p. 161. This evidence also is sufficient for a jury to find that the victims were put in fear of imminent serious bodily injury.

Likewise, the Court is satisfied that the guilty verdicts on all the above counts were not against the weight of the evidence. Rather, they were entirely consistent with the



evidence presented.

The final issue presented by the defendant is that the Court erred in applying the five (5) year mandatory minimum sentence under 42 Pa.C.S.A. §9712(a). The Court disagrees. This section provides a mandatory minimum sentence of at least five (5) years when an offender is convicted of a crime of violence if the offender visibly possessed a firearm or replica of a firearm, whether or not the firearm or replica was loaded or functional, that placed the victim in reasonable fear of death or serious bodily injury during commission of the offense.

The evidence in this case clearly demonstrated that the defendant perpetrated this robbery with a gun or a replica of a gun. The evidence indicated that all three victims thought the defendant had a real gun. Ms. Wilborn was obviously terrorized and feared being shot. While the evidence does seem to indicate that the gun was the toy gun admitted into evidence as Commonwealth Exhibit 1, this is of no comfort to the victim's who believed the defendant had a real gun at the scene of the robbery. The defendant obviously used the toy gun in a manner so that the victims would believe he could shoot them, and the toy gun accomplished its obvious purpose of instilling such fear and terror in the victims. Mr. Thompson described the gun as silver, with a barrel about eight (8) inches long. N.T., p. 162. Ms. Wilborn feared she would be shot. Also, noteworthy is that the defendant apparently made some modification to the gun which made it look more real. Aronda Hill testified that the gun originally had an orange knob on its tip. This knob was apparently removed, since Ms. Hill testified that while the gun was missing, she did find the orange knob on a table in her apartment when the police came to

her home to question her. N.T., Pp. 1-16.

The term "Replica of a Firearm" is defined in 42 Pa.C.S.A. §9712(e) as "an item that can reasonably be perceived to be a firearm". Clearly, Commonwealth Exhibit 1 can reasonably be perceived to be a firearm. In fact, all three (3) victims perceived Commonwealth Exhibit 1 as a firearm. Thus, the Court appropriately applied the mandatory minimum sentence to this case.

DATE: 8/18/00

By The Court,

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Kenneth D. Brown, J.

cc: District Attorney  
Colleen Eddinger, Esquire (APD)  
Work file  
Superior Court (original & 1)  
Judges  
Gary Weber, Esquire (Lycoming Reporter)