

DOCKET NO.: FBT-CV15-6048078-S : SUPERIOR COURT
JONATHAN SHAPIRO : JUDICIAL DISTRICT OF
PLAINTIFF : FAIRFIELD
V. : AT BRIDGEPORT
FRANK DELBOUNO, JR. : OCTOBER 6, 2016
and CITY OF BRIDGEPORT
DEFENDANT

**PLAINTIFF JONATHAN SHAPIRO'S MEMORANDUM OF LAW IN SUPPORT
OF HIS MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OF PRIOR
CONVICTIONS AND MISCONDUCT**

The Plaintiff, Jonathan Shapiro, submits this Memorandum of Law in support of his Motion *in Limine* to preclude the Defendants, Frank Delbuono and the City of Bridgeport, from offering evidence, including documents and testimony, about Mr. Shapiro's prior convictions and drug use.

I. INTRODUCTION

During Mr. Shapiro's deposition on March 2, 2016, defense counsel elicited information about Mr. Shapiro's prior convictions as well as uncharged misconduct. See Deposition Transcript of Jonathan Shapiro ("Shapiro Dep."),

pp. 16-22 (relevant excerpts of which are attached as Ex. A). While defense counsel has stated his intention to introduce evidence of Mr. Shapiro's convictions and misconduct in order to cast doubt upon his credibility, ultimately neither is relevant, and both are extremely prejudicial to Mr. Shapiro. Mr. Shapiro's nearly ten-year old convictions are for firearm possession and attempted narcotics possession, crimes that do not bear directly upon his credibility, but will likely expose him to undue prejudice. Further, his uncharged misconduct, drug use, is irrelevant to this proceeding, as it is undisputed that he was not intoxicated at the time of the collision, and, given that he has abstained for over a year, his intoxication will not be a relevant issue at trial.

In short, there is no basis for this Court to permit the introduction of the evidence of Mr. Shapiro's prior convictions and drug use. Thus, the Court should exercise its gate-keeping authority and preclude the plaintiff from offering evidence of Mr. Shapiro's prior convictions and/or drug use.

II. FACTUAL BACKGROUND

On the afternoon of February 15, 2013, Mr. Shapiro was driving through a green light at an intersection in Bridgeport, Connecticut when Defendant Officer Delbuono drove through a red light at a high rate of speed, striking Mr. Shapiro's vehicle and causing severe injuries. Mr. Shapiro suffers from painful, permanent, and extensive injuries to his spine, in addition to other ongoing symptoms due to Defendant Officer Delbuono's negligence.

In Mr. Shapiro's deposition on March 2, 2016, defense counsel elicited information about Mr. Shapiro's prior convictions. Through defense counsel's questioning, Mr. Shapiro acknowledged that he was sentenced by the State of Connecticut in connection with felony attempted possession of narcotics in 2007, spending a few months in Connecticut prisons. Shapiro Dep. pp. 20-21. Further, Mr. Shapiro acknowledged that he had been sentenced for federal felony possession of a firearm in 2007, and spent three years incarcerated. *Id.*, pp. 18-19.

Later in the deposition, Mr. Shapiro explained that he had been in drug rehabilitation facilities earlier in his life and had also used drugs when he was young. Defense counsel then asked when Mr. Shapiro had last used drugs. Mr.

Shapiro responded that after suffering his severe injuries, he was prescribed a host of painkillers, and when his prescriptions had run out, he used narcotics daily for a short time. Mr. Shapiro explained that it had been over a year since he had last used such drugs.

III. LEGAL STANDARD

Connecticut Practice Book §15-3 provides that the “judicial authority to whom a case has been assigned for trial may in its discretion entertain a motion *in limine* made by any party regarding the admission or exclusion of anticipated evidence.” Practice Book § 15-3. The purpose of the motion *in limine* “is to exclude irrelevant, inadmissible and prejudicial evidence from trial.” *State v. Lo Sacco*, 26 Conn. App. 439, 444 (1992). Where admission of evidence “would create undue prejudice and threaten an injustice,” the trial court should exclude it. *Id.*

Indeed, while the credibility of a witness may be impeached by any party, Conn. Code of Evidence § 6-4, relevant evidence concerning the credibility of a witness “may be excluded if its probative value is outweighed by the danger of unfair prejudice or surprise, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of

cumulative evidence.” Conn. Code of Evidence § 4-3. Evidence is prejudicial “when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence.” *State v. Orr*, 291 Conn. 642, 668 (2009) (citing *State v. Feliciano*, 256 Conn. 429, 454 (2001); *United States v. Figueroa*, 618 F.2d 934, 943 (2d Cir. 1980).

IV. ARGUMENT

A. Evidence of Mr. Shapiro’s prior convictions should be precluded, as the likelihood of prejudice is high, the significance of the convictions in indicating untruthfulness is low, and the convictions are remote in time.

A witness can be shown to have prior convictions, General Statutes § 52-145, but evidence that a witness was convicted of a crime is only admissible if the crime was punishable by imprisonment for more than one year. Conn. Code of Evidence § 6-7. Further, “in determining whether to admit evidence of a conviction, the court shall consider: (1) the extent of the prejudice likely to arise, (2) the significance of the particular crime in indicating untruthfulness, and (3) the remoteness in time of the conviction.” *Id.*

The evidence of Mr. Shapiro's prior convictions should be precluded, because an analysis of each of the foregoing factors militates in favor of preclusion rather than admission. First, the extent of prejudice in this instance is extremely substantial. Because the current case has no relation to Mr. Shapiro's prior convictions, here, "adverse impact of the challenged evidence outweighs its probative value." *State v. Harrell*, 199 Conn. 255, 262 (1986). Mr. Shapiro's conviction for firearm possession and attempted cocaine possession is likely to "unnecessarily arouse the jury's emotions," including "hostility," *State v. Rinaldi*, 220 Conn. 345, 356, 599 A.2d 1 (1991) (citing *State v. DeMatteo*, 186 Conn. 696, 702-703, 443 A.2d 915 (1982)), as he may be unfairly perceived as contributing to crime that has affected his community. Further, the convictions for firearm possession and attempted cocaine possession will "create distracting side issues," as neither conviction bears directly upon his credibility. *Rinaldi, supra*, at 356.

Second, neither of Mr. Shapiro's former convictions, for attempted possession of narcotics and possession of a firearm, are *crimen falsi* indicative of untruthfulness. "Crimes not reflecting directly on credibility are not per se admissible for impeachment purposes but must survive a balancing of

probative value versus prejudicial tendency; crimes in this category are not as readily admissible as those that “by their very nature indicate dishonesty or tendency to make false statement[s].” *State v. Dobson*, 221 Conn. 128, 138, (1992) (quoting *State v. Geyer*, 194 Conn. 1, 16 (1984)). Indeed, in discussing this issue the Connecticut Supreme Court has pointed to narcotics convictions, *id.*, and firearm possession, *State v. Carter*, 228 Conn. 412, 431 (1994), as examples of crimes not reflecting on the credibility of the person who has been convicted. Evidence of such crimes is therefore inadmissible unless the Defendants carry their burden “of proving that the probative value of prior convictions for impeachment purposes exceeded the prejudicial effect.” *Dobson*, *supra*, at 138. Because neither of Mr. Shapiro’s former convictions implicates dishonesty or tendency to make false statement, evidence of such convictions should be precluded.

Finally, both of the convictions are remote in time. The Connecticut Supreme Court has established no absolute time limit prohibiting the admissibility of certain convictions, but has suggested, per Federal Rule of Evidence 609, a ten year limit on admissibility measured from the later of the date of conviction or the date of the witness’ release from the confinement

imposed for the conviction. *State v. Nardini* 187 Conn. 513, 526 (1982). The instant case is thus analogous to Justice Shea's concurrence in *Harrell, supra*, where he argued that the minimal probative value of a conviction that did not implicate dishonesty and "barely falls within the ten year federal limitation" militates in favor of preclusion.

B. Evidence of Mr. Shapiro's prior uncharged misconduct should be excluded, because it is irrelevant and immaterial to the dispute, and its prejudicial effect significantly outweighs its probative value.

Evidence concerning uncharged misconduct is generally inadmissible to show that a witness has a bad character, and such evidence may only be admitted for another purpose, which includes malice, motive, common plan, absence of mistake, or knowledge. Conn. Code of Evidence §4-5(a), (c). "In order to determine whether such evidence is admissible, we use a two part test. First, the evidence must be relevant and material to at least one of the circumstances encompassed by the exceptions. Second, the probative value of [the prior misconduct] evidence must outweigh [its] prejudicial effect." *State v. Ali*, 92 Conn. App. 427, 433 (2005)(quoting *State v. Merriam*, 264 Conn. 617, 661 (2003).

Here, the evidence of Mr. Shapiro's prior misconduct, drug use, does not come within an exception to the general rule barring the introduction of such evidence to show that he has a bad character. Mr. Shapiro's prior uncharged drug use does not bear whatsoever on the collision, as the two periods of admitted drug use occurred in Mr. Shapiro's youth and in the aftermath of the collision that caused him severe injuries and led to prescription painkiller use. Mr. Shapiro has stated that he has not used drugs in over a year and has taken no drugs that would affect his ability to recall the collision. Given the foregoing, evidence of Mr. Shapiro's prior uncharged misconduct is neither relevant nor material to this matter. The court should preclude this material because "a witness may be impeached by evidence of specific acts of misconduct that relate to veracity, but not by those that merely illustrate general bad behavior." *State v. Grant*, 89 Conn. App. 635, 643 (2005) (quoting *State v. Lambert*, 58 Conn. App. 349, 356, cert. denied, 254 Conn. 915, 759 A.2d 507 (2000)). Here, evidence of Mr. Shapiro's prior uncharged misconduct does not challenge the veracity of any evidence he is likely to present, but is merely "bad behavior."

Further, the minimal probative value of this evidence is outweighed by its highly prejudicial effect. See Conn. Code of Evidence §4-3. The evidence of Mr. Shapiro's prior drug use does not relate to the collision, as his admitted drug use occurred several years prior, and once subsequent to the collision. Because there is no evidence of Mr. Shapiro's drug use "at the time of the events in question or at the time of his ... testimony," it has no bearing on the case. *State v. Clark*, 260 Conn. 813 (2002). Thus, its probative value on the matter is minimal, but its prejudicial potential is severe. If the evidence were offered, it would likely be with the intent of disputing Mr. Shapiro's account of the collision, which, "while tending to prove the occurrence of a "bad act," would not have been otherwise probative." *Grant, supra*, at 642.

Finally, such evidence does not come within the exception for impeaching the credibility of a witness by showing his reputation for truthfulness or untruthfulness, Conn. Code of Evidence §4-4, nor is Mr. Shapiro's drug use relevant to a character trait in issue in this case, Conn. Code of Evidence §4-5(d). As such, the evidence of Mr. Shapiro's drug use, which is prior inadmissible uncharged misconduct, should be precluded.

CONCLUSION

Evidence of Mr. Shapiro's prior convictions should be precluded, as admission of evidence of the prior convictions would be highly prejudicial, the convictions are for offenses unrelated to Mr. Shapiro's character for truthfulness or untruthfulness, and they are very remote in time. Further, evidence of Mr. Shapiro's prior uncharged misconduct, drug use, should be precluded, as it is an example of bad behavior only, irrelevant and immaterial to this dispute, and its prejudicial effect significantly outweighs the probative value of such evidence.

For the foregoing reasons, this Court should grant the Plaintiff's Motion *in Limine* to Preclude Evidence of Prior Convictions and Misconduct.

THE PLAINTIFF

By: 

Keyin C. Shea
Clendenen & Shea, LLC
400 Orange Street
New Haven, Connecticut 06511
203/787-1183

CERTIFICATION:

This is to certify that a copy of the foregoing was sent via e-mail this 6th day of October, 2016 to Russell D. Liskov, Associate City Attorney, Office of the City Attorney at

Russell.Liskov@bridgeportct.gov



CLENDENEN & SHEA, LLC

EXHIBIT A

**EXCERPTS OF THE MARCH 2, 2016 DEPOSITION OF PLAINTIFF
JONATHAN SHAPIRO**

pp. 16-22

1 you lived there for?

2 A I think it will be two years in June.

3 Q And where did you live prior to that time?

4 A I lived in Naugatuck, 99 Galpin Street.

5 Q What are the dates you lived on 99 Galpin
6 Street?

7 A I couldn't tell you the exact years.

8 Q You were a tenant?

9 A Yes. I was.

10 Q Okay. When did you move out of your parents'
11 house, if you ever lived in your parents' house,
12 obviously. I didn't lay that foundation but did you live
13 with your parents while you were in high school?

14 A I did. Yes.

15 Q Did there come a time you moved out of your
16 parents' house?

17 A Actually, I was incarcerated and when I got out
18 of prison, my parents helped me find a place.

19 Q Okay. When do you think you left your parents'
20 house due to incarceration, approximately?

21 A It would be December 21, 2007.

22 Q And you were incarcerated from 12-21-2007
23 until?

24 A I believe it was June 2010.

25 MR. SHEA: I just want to direct the

1 witness if you are guessing, you should say that
2 it's a guess because the court reporter doesn't
3 take down like a rising intonation. Where you
4 say 2010, (?) it comes out 2010. If you want to
5 say it's a guess, you need to use those words.

6 MR. LISKOV: Okay.

7 A It was 2010. I'm not sure on the exact month
8 and the day but I believe that's accurate.

9 Q Kind of, mostly everyone usually remembers when
10 they go in, when they go out. It's kind of like the
11 army. I remember the day I got out of the army like I
12 know the day I'm gonna retire.

13 A I'm pretty sure that number is accurate.

14 Q I bet you're correct. Everyone is waiting to
15 get out. I have some clients who got out and they're
16 like-

17 (reporter asking if this is on the
18 record)

19 Q Okay. You can put it on. I don't really care.
20 So after you leave high school in 2003, you have a series
21 of jobs?

22 A I believe, yeah. I had -- To be honest, my
23 memory is a bit hazy of that time but yes, I don't know
24 the exact dates but yes, I did have a few jobs.

25 Q Okay. You lived at home with your parents?

1 A Yes. I did.

2 Q You lived at your home with your parents until
3 you were incarcerated?

4 A Yes. That's correct.

5 Q And in reviewing your records, we'll eventually
6 get to, there came a time when you were convicted of a
7 felony?

8 A Yes.

9 Q Can you tell me about that.

10 A I'm not sure the -- I'm not sure what the
11 original felony was. My latest conviction was for a
12 felony possession of a firearm. That was in 2007.
13 Before that I can't tell you exactly what charges stuck
14 and which didn't.

15 Q Okay. Now, tell me about the felony possession
16 of a firearm. What was that all about?

17 A Well, I -- I liked guns and I don't really
18 know what more to tell you than that.

19 Q Well, where was the -- where you were arrested
20 for that?

21 A Howe Avenue in Shelton.

22 Q Okay. What kind of gun was it?

23 A It was an antique revolver. I can't really
24 remember the brand name -- Harrington Richardson, I
25 think. Something like that.

1 Q Where was the case handled as far as court?

2 A Derby Superior Court and it became a federal
3 case and then it was Bridgeport federal.

4 Q You were incarcerated for that, that weapons
5 charge, in federal prison?

6 A Yes. I was.

7 Q Where were you incarcerated for that?

8 A I was designated to North Carolina. By the
9 time I got there, there wasn't much time left.

10 Q And was the case handled down here in
11 Bridgeport?

12 A Yes. It was.

13 Q And what was your sentence for that?

14 A I believe it was, I want to say, twenty-eight
15 to thirty-three months. In that general area.

16 Q You spent most of your time up here in
17 Connecticut?

18 A I believe it was nine months Bridgeport, nine
19 months Rhode Island, a couple of weeks scattered on my
20 way to North Carolina and the rest of the time there,
21 then a halfway house, then Rhode Island. Just really all
22 over the place.

23 Q What year do you think that was?

24 A That was between 2007, 2010.

25 Q You were also convicted of a felony in the

1 State of Connecticut for attempt to commit possession of
2 narcotics?

3 A Yes.

4 Q Okay. Can you tell me about that.

5 A I was attempting, I believe I was attempting,
6 to acquire cocaine and the police showed up.

7 Q Okay. And where were you arrested for that?

8 A That was Shelton, Connecticut.

9 Q That case was eventually handled in the Derby
10 GA?

11 A Yes.

12 Q And do you remember what your sentence was on
13 that case?

14 A I couldn't tell you off the top of my head, no.

15 Q Do you remember what year that took place,
16 approximately?

17 A I couldn't tell you, no.

18 Q Okay. If I told you it was, original arrest
19 date, was September 29, 2006 and the sentence date was
20 3-22-2007, would that refresh your recollection?

21 A That could be accurate, yes.

22 Q Did you ever spend any time in the State of
23 Connecticut penitentiaries for the attempted
24 possession -- attempt to commit possession of narcotics?

25 A I did. I believe that was, yeah, I believe it

1 was a few months. Yes.

2 Q And did you have to do probation afterwards for
3 that possession?

4 A Yes. I did.

5 Q And are you still on probation for that?

6 A No.

7 Q You successfully completed probation?

8 A Yes.

9 Q As far as the felony possession of the firearm,
10 did you -- you were on probation after that?

11 A Yes.

12 Q And did you successfully complete that
13 probation?

14 A I did, actually. I was in an accelerated
15 program, a stricter program, for a shorter duration and I
16 completed that successfully. I think that was support
17 court or something like that.

18 Q As part of your probation you have to show up
19 and do urine specimens?

20 A Yes.

21 Q Both programs?

22 A Yes.

23 Q And you ever fail any of those urine tests?

24 A The -- not for the federal. I can't remember
25 2000 -- I can remember 2006 or, I believe the state one,

1 or federal no, I passed everything.

2 Q Okay. Going through your records, and I'll get
3 to more, I see you were an active karate person?

4 A Not karate but martial arts.

5 Q What kind of martial arts?

6 A Brazilian Jiu Jitsu and Muay Thai principally.
7 I have dabbled in other forms.

8 Q When did you start doing martial arts?

9 A Probably about 2011.

10 Q And in the martial arts you participated were
11 there any of kind of awards of belts like karate or judo?

12 A They do, yes. In Brazilian Jiu Jitsu they do.
13 Not in Muay Thai.

14 Q What did you achieve as far as your ranking?

15 A Blue belt.

16 Q How would that range as far as like start until
17 expert?

18 A Well, it's the second lowest.

19 Q Okay. When was the last time you participated
20 in any martial arts?

21 A Yesterday.

22 Q You did? Okay. What did you do yesterday in
23 martial arts?

24 A It was a Muay Thai class.

25 Q I don't know what Muay Thai is. I have an idea