

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION

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COMMONWEALTH : No. 9908-089811  
vs :  
LYNDA FERNICCHIO :

- - -

Friday, September 17, 2004

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COURTROOM 607  
CRIMINAL JUSTICE CENTER  
PHILADELPHIA, PENNSYLVANIA

- - -

VIOLATION OF PAROLE HEARING

BEFORE: HONORABLE GREGORY E. SMITH, J.

- - -

GAIL S. FINN, RPR - 215/683-8030

APPEARANCES:

EDWARD JARMMILL, ESQ.

Assistant District Attorney  
for the Commonwealth

PHILIP CHARAMELLA, ESQ.

for the Defendant

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I N D E X

Commonwealth's Evidence

Witness: D. C. RD. RC.

Commonwealth's Exhibit No.:

Defense Evidence

Witness: D. C. RD. RC.

Defense Exhibit No.:

2 THE COURT: Why is it here?

3 MS. DAWSON: It's here because of  
4 nonpayment of restitution and a direct  
5 violation.

6 THE COURT: What's the direct  
7 violation?

8 MS. DAWSON: She was arrested in  
9 another county where she lives for a  
10 controlled substance on February 12th of 2003.  
11 She was sentenced on October 5th. We found  
12 out about this through a tip, NCIC.

13 THE COURT: Was her probation  
14 transferred to Johnstown?

15 MS. DAWSON: Yes. I'm not sure why  
16 I didn't get any notification. To my  
17 knowledge, she is on probation in Somerset  
18 County for this new direct and she was prior  
19 to getting her Philadelphia sentence.

20 THE COURT: What's the restitution  
21 problem?

22 MS. DAWSON: She only paid \$320 out  
23 of the \$21,000. Balance is \$21,027.65.

24 THE COURT: What was she posted at  
25 the rate of?

This is a big lie that pops up frequently. The truth is Ms. Kerr has never graduated from any college with a BS in anything.

Ms. Kerr likes to confuse people by saying she was a licensed Registered Nurse. SHE WAS NOT. She was, however very briefly, an LPN, which is a Licensed Practical Nurse.

The amount of training to become an LPN is significantly less than what is required to become an RN. The responsibilities of an LPN are substantially less than those of an RN.

It is true that due to a drug problem and a related criminal matter involving the theft of Demerol from a hospital, she did in fact lose her license.

MS. DAWSON: \$100 per month.

THE COURT: How many months has she been on probation?

MS. DAWSON: She has been on probation since 2001, September of 2001.

MR. CHARAMELLA: If I may, this situation has a long history, as your Honor is aware in this case. With regard to the reporting of the present violation when she was arrested up in Somerset County, she did report to her probation officer up there. It wasn't reported back down to Philadelphia.

If your Honor recalls, Ms. Fernichio -- she has a BS-RN, college graduate, registered nurse, she got into a drug problem years back. She lost her license as a result of that. She got into trouble --

THE COURT: We are here today because she has been convicted of a crime while on probation and she hasn't paid restitution. That's why she got a break the first time.

MR. CHARAMELLA: In terms of the violation, what she did, she had relapsed on



Another Lie!! The police report states that the ER doctors recognized Ms. Kerr from previous times in their ER. They called the police. It was only once she realized she'd been found out that she confessed.

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her drug problem. What she did, she went to a medical facility, gave them a fake name in an attempt to get drugs.

THE COURT: Sounds like she is operating the same way.

MR. CHARAMELLA: When they came to give her -- interject her with the Demerol, which was her drug addiction prior, she told them the truth before they gave her the drugs. She admitted and told them she had lied.

She came clean before they gave her the drugs. I didn't represent her. She was given probation for that offense.

They then -- Somerset County said: Since you are on probation with us, she went in front of the judge in Somerset County. She gave her a sentence of six to 23 months for this same action we're here for today.

She did serve the six months and was released.

The problem Ms. Fernichio has is deeper than drugs. She attempted suicide; she is under medical care at this point in time. She had tragic events in her life that was

Reports are Ms. Kerr took a few too many Ambien. This is not a serious suicide attempt. She probably had a very restful night's sleep though.

This is a despicable lie. Not a word of this is true. There will be more detailed information about this horrific lie elsewhere on this site.

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made worse by the drug problems.

Her daughter died in 2000. Her long-time boy friend, who is the father of her daughter, died of bone cancer.

She is treating presently with two psychiatrists, Cheryl and Raymond Milworth. She has physical problems.

She is presently on medication. I told her to bring them with her. She has them. She is diagnosed as manic depressive or bipolar. She is presently, as a result of her bipolar problems, on Lexapro, Elavil and Paxil.

She also suffers from pancreatitis, which is inflammation of the pancreas. It's very painful. Probably, at least partially, caused by the years of her drug problems with the Demerol. She takes medication for that.

She has been diagnosed with post-traumatic stress disorder as the result of her long-time boy friend having died, father of her child and her daughter.

She has liver failure, which she is taking Prednisone, which is a pretty heavy

Her daughter is very much alive. Lynda's ex-husband is the father of her the daughter Lynda claims has died, and he is also very much alive. The so-called "boyfriend" she is referring to is not her boyfriend. He is Max Camp, someone she had a relationship with many, many years ago. He actually did die in 2002. Interestingly, in the year 1978, Lynda and Max were having an affair with each other. They were married to different people and were cheating on their spouses. Lynda got pregnant by Max. Max and Lynda agreed that the only way to handle this pregnancy was for Lynda to get an abortion, which she secretly did in Pittsburgh. More about this later...



2 steroid. She has to have blood tests no later  
3 than every ten days.

4 Although that's partially  
5 hereditary, I'm sure it's partially from the  
6 years of drug abuse.

7 THE COURT: Do you have the medical  
8 records? If she goes to prison, you will have  
9 to notify the prison.

10 MR. CHARAMELLA: She has the  
11 medications with her in a bag with her friend

NICK !!!!  


12 She is presently involved in  
13 psychiatric care with Dr. Milworth, goes to  
14 Alcoholics Anonymous.

15 I said, "I didn't know you had a  
16 drinking problem." She said she didn't. When  
17 she went to NA, she felt that all the people  
18 in NA were young and there was an edge about  
19 them and she was concerned for her safety.

20 There is a gentlemen in the back row  
21 who is in NA with her. He came down from  
22 Johnstown.

23 She did serve a pretty substantial  
24 service for the underlying conviction for  
25 which we're here. I understand we're here for



2 restitution in this matter. The problem has  
3 been that her psychiatrists don't want her to  
4 work because she is suicidal, she has all  
5 these problems. Their advice is: You can't  
6 work because you're on all this -- you have  
7 all these problems. The medication for the  
8 post-traumatic disorder, you can't work. The  
9 recommendation is not to work.

10 She has applied for SSI sometime  
11 ago. With the Federal government, that takes  
12 a while, and hopefully that gets in.

13 Right now she is living in a room in  
14 Johnstown. That costs her \$45 per month. Her  
15 friends are assisting her.

16 She does work, to be candid and  
17 frank with the Court, a small period of time  
18 every week. Her doctors don't want her to do  
19 that. She has to eat. She does typing,  
20 doctors' reports, transcribing dictation for  
21 them one day a week, sometimes a few hours on  
22 another day. Her psychiatrists don't want her  
23 to work more than that until she can get  
24 somewhat better, because that would relapse  
25 her.

Reports are Ms. Kerr took a few too many Ambien. This is not a serious suicide attempt. She probably had a very restful night's sleep though.

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2 She has attempted suicide by an  
3 overdose a couple years ago.

4 I think the problem we have, she  
5 has -- I know your Honor can incarcerate her  
6 for her guilty plea up there for the crime  
7 that we talked about a few minutes ago. She  
8 did serve six months on that.

9 We also have this financial  
10 situation, but I think it's extremely  
11 difficult when you have a person at this low  
12 point in her life because of physical reasons  
13 and mental reasons, doesn't have the ability  
14 and, quite frankly, under the medication she  
15 is under, cannot work with a doctor's  
16 recommendation. I think a company could get  
17 in trouble if a company hired her.

18 She did bring \$20 today. She went  
19 downstairs, but they wouldn't take it. They  
20 said they didn't have the proper records.  
21 They told her to stand in another line. She  
22 was worried she would miss the hearing.

23 I honestly don't know what else to  
24 tell you with regard to finances, because I  
25 don't think she has the ability at this point

2 THE COURT: I'm familiar with the  
3 modus operandi.

4 MR. JAMMILL: I don't think any more  
5 need be said.

6 THE COURT: You don't deny she is in  
7 violation of probation?

8 MR. CHARAMELLA: She was found  
9 guilty or pled guilty up at State College.

10 THE COURT: Say the words, "She is  
11 in violation, judge." Go on, say it.

12 MR. CHARAMELLA: She is in  
13 violation, judge.

14 THE COURT: The Court finds the  
15 defendant in violation. Probation revoked.

16 MR. CHARAMELLA: With regard to  
17 sentencing, what I think in this situation,  
18 she should be given an extended period of  
19 probation; she should have to continue with  
20 her psychiatric care. The psychiatrists would  
21 have to report to your Honor when they, in  
22 their opinions, based on the medications she  
23 is on in the future or not, when she could go  
24 back to work. At that point in time she has  
25 to pay back the maximum that she could



2 possibly pay on that basis.

3 Also, of course, she has to continue  
4 monitoring up where she resides in terms of  
5 any kind of drug use.

6 It's my understanding that she has  
7 been monitored up there and completely drug  
8 and alcohol free for approximately 15 months.  
9 She is trying to deal with that up there. If  
10 she violates that, her future is in her hands.

11 At this point, she comes down here  
12 and serves time, in addition to the medical  
13 problems that the system will have to deal  
14 with. I don't think it's going to get the  
15 result that we can if we get her back in  
16 society to pay the money back.

17 THE COURT: Commonwealth...

18 MR. JAMMILL: Whatever you sentence  
19 her to, she needs the highest level of  
20 supervision. Defense counsel is saying two  
21 things: Number 1, please let her walk.  
22 Number 2, she needs everybody to be around her  
23 because she is a danger to herself.

24 I don't know how your Honor fashions  
25 one or the other. She needs the highest level

2 of supervision. If that means incarceration,  
3 so be it. I don't know if that's a bad thing  
4 for someone who can't control themselves.

5 That report tells me that someone  
6 who can put their mind to use to other things,  
7 she can go in and talk to this doctor twice in  
8 two months and posing as another person. She  
9 is creative in that sense.

10 THE COURT: Ms. Fernichio, do you  
11 want to say anything?

12 THE DEFENDANT: You know I have been  
13 before you.

14 THE COURT: Do you remember what I  
15 told you?

16 THE DEFENDANT: Not to come back.  
17 When I use Ambien and the other medication,  
18 I'm somebody that I don't like very much.

19 THE COURT: Who are you now? Who am  
20 I sentencing today?

21 THE DEFENDANT: Me.

22 THE COURT: That's who I want.

23 THE DEFENDANT: This person I like.  
24 I have problems, we all have problems. I'm  
25 sorry. I'm so sorry.

2           THE COURT: I heard that before, Ms.  
3           Fernichio. You know that. I heard about all  
4           your medical problems, all the things that  
5           your attorney said. This is a reiteration of  
6           what I heard before. You're back again. I  
7           told you last time, and I cut you a break last  
8           time, transferred your probation, serve a  
9           little time.

10           Is five years along-term probation?

11           MR. CHARAMELLA: Yes.

12           THE COURT: I have done that. I  
13           tried to do that. It just didn't work. Now  
14           we have to try some more jail time. Maybe  
15           you'll get it this time. Not a lot.

16           Defendant is in violation.  
17           Probation revoked. Six to 12 months in prison  
18           followed by a period of four years probation.

19           Defendant must receive psychiatric  
20           treatment, take all her medication.

21           MR. CHARAMELLA: If I may ask, is it  
22           possible that she could have a week to take --

23           THE COURT: You know what's going to  
24           happen. She will go up there and claim she is  
25           ill, ill, ill. We'll never get her back in



2 here. Then I will have to take this sentence  
3 back and I'm going to give her two and a half  
4 to five years. Does she want to risk that?

5 THE DEFENDANT: No.

6 THE COURT: I got her now. She will  
7 claim to be sick, sick. I'm tired of her  
8 games. I have been through all these games.  
9 I have seen this before. I'm not some rookie  
10 judge.

11 MR. CHARAMELLA: She knew today that  
12 the probability -- from me, I can tell you,  
13 she knew today that the probability of her  
14 going to jail was possible.

15 THE COURT: I told her that. Every  
16 time she sees me I will send her to jail.  
17 Every time --

18 MR. CHARAMELLA: That was my point.  
19 She is here.

20 The other situation, she did have  
21 medical testing for the liver. She is here  
22 today, knowing the probability is that she  
23 could go to jail.

24 THE COURT: Commonwealth's position?

25 MR. JAMMILL: You just explained it.

2 To give her more time would actually hurt her.

3 THE COURT: Sorry, counsel. She  
4 will do something to somebody and somebody is  
5 going to get hurt, either herself or somebody  
6 else.

7 You have all that medical  
8 information?

9 MR. CHARAMELLA: Yes. I will give  
10 to the Court what I have. She also has her  
11 actual prescriptions which have the  
12 milligrams.

13 THE COURT: Great.

14 Restitution in the amount of the  
15 \$21,027.65. It's to be paid during the course  
16 of parole and probation.

17 Ms. Fernichio, I say to you again:  
18 The games have to stop. You're not impressing  
19 me. Every time I hear of the games, next time  
20 I will send you to state prison, wash my hands  
21 of you. That's it. You will do two and a  
22 half to five in the state pen.

23 You can write all the letters, and  
24 your friends, and all that scheming stuff you  
25 want. It won't make a difference.

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(Whereupon the defendant was advised  
of her appellate rights by her counsel.)

THE COURT: Sentences on both cases  
to run concurrent.

(Whereupon this matter adjourned.)