

Caretaker Found Not Guilty

The caretaker charged with assaulting the developmentally disabled brother of **Advocacy Network** president Sheila Paquette was found “not guilty” in Falmouth District Court on July 30. The six-member jury of four women and two men reached their unanimous verdict after less than a half hour of deliberation.

John Saunders Jr. of Palmer had been charged with “Assault and Battery on a Person with Intellectual Disability” following a weekend trip to Cape Cod in late June of 2010, involving two residents of a West Springfield home operated by the Center for Human Development, a contractor with the Massachusetts Department of Developmental Services.

The weekend vacation was provided for Paquette’s brother, 56-year-old John Burns, a *Ricci Class* member and former resident of Belchertown State School, and his roommate of seven years, David Vecchiarelli. Burns, who is non-verbal, also suffers from cerebral palsy and requires almost total assistance. Also attending the trip was Daniel Aguda, who has been Burns’ one-to-one caretaker for 25 years.

Paquette, who has pursued this case for two years as her brother’s legal guardian, testified that he has the intellectual development of an 18-month-old. Burns did not appear in court. Paquette showed Assistant District Attorney Kerry Whalen a photograph that she took of her brother the day after his return, showing both eyes severely blackened. Paquette said she had been notified by Christina

Mendoza, Burns’ case worker at Sunshine Village, his day program, that her brother’s eyes were bruised. Mendoza also testified in court that Burns had scratch-like lacerations on his back.

Paquette took her brother to Noble Hospital in Westfield, where an examination found that Burns’ blackened eyes were the result of blood pooling, consistent with a sharp blow to the bridge of his nose.

Aguda, who was primarily responsible for Burns’ care on the trip, testified that while he took care of laundry and packing on the second floor in preparation for leaving the Falmouth house that weekend, he asked Saunders to watch Burns briefly and to help him use the first floor bathroom.

Vecchiarelli, Burns’ roommate, told the court that he walked by the open door of the bathroom

“Guardians or parents need to file charges. DPPC and DDS won’t do it. I’m extremely frustrated.” — Sheila Paquette

and saw Burns on the toilet with Saunders holding Burns by the head, one hand behind his head, the other against his mouth. In a written statement filed earlier in court, Vecchiarelli had also said that he saw Saunders strike Burns on or around the bridge of his nose with an open hand. The statement was written by a CHD program manager, and signed by

Vecchiarelli. But when defense attorney Megan English Braga questioned Vecchiarelli on the witness stand, he said he did not actually see Saunders hit Burns.

Called to the stand in his own defense, Saunders said he helped guide Burns down to the toilet, placing his hands against his head to keep him from teetering. In response to a question from his attorney asking if he struck Burns in the face, Saunders said, "I did not."

Saunders also said a group of about five women who had just arrived to stay at the house for the following week were in the living room at the time that he was toileting Burns. Saunders also testified that upon their return to the house in West Springfield, another CHD staff member, who was late in arriving for the shift change, was involved in some sort of altercation and appeared "agitated."

Case Raises Many Questions

In *The Commonwealth vs. John Saunders Jr.*, the six-person jury concluded, unanimously, that the defendant was not guilty. The members were unconvinced that there was enough evidence to convict Saunders of Assault and Battery Against an Intellectually Disabled Person, a felony charge.

As Judge Peter Kilmartin instructed the jurors, Mr. Saunders did not have to provide any evidence to negate the charge. The burden of proof was entirely upon the state.

The state, specifically, the Falmouth Assistant District Attorney, failed to show beyond reasonable doubt that Saunders was the individual whose attack resulted in the black eyes inflicted on John (Jack) Burns, a 56-year-old man with cerebral palsy and the mental ability of an 18-month-old, unable to speak.

Contrary to his earlier signed statement, David Vecchiarelli, the prosecution's prime witness, who in court said he observed Saunders with one hand behind Burns' head and the other over his mouth while Burns was sitting on the toilet, said he did not see Saunders actually strike Burns. Vecchiarelli, who himself is mentally handicapped, repeatedly stuttered and smiled during questioning by both Assistant D.A. Kerry Whalen and defense attorney

Witnesses testified that Burns did not appear upset before leaving the Falmouth house, nor at a later restaurant stop for lunch, nor on the ride back to West Springfield.

Falmouth Police Officer Todd Brand, who did the initial investigation after Paquette herself filed the complaint, testified that Saunders told him that he assumed Burns' black eyes were inflicted by another CHD staff member.

Following the trial, Paquette said, "Guardians or parents need to file charges. DPPC and DDS won't do it, so assaults like this never show up in an individual's CORI (Criminal Offender Record Information) check. But we brought it to court.

"I found out that these agencies don't talk to each other. I did most of the investigation work myself. I'm extremely frustrated."

Megan English Braga, as he admirably attempted to recount the incident of two years ago involving his longtime roommate.

Thanks to the perseverance of Sheila Paquette, Jack's brother and guardian, there was plenty of evidence to prove his injuries. There was the photograph of Jack's face that she took herself the day after he returned from Cape Cod. There was the hospital report that concluded that Jack's injuries were most likely sustained by a sharp blow to the area of the bridge of his nose, a report that exists because she is the one, the only one, who decided that Jack needed medical attention that day. There was also the report of the Falmouth police officer who issued the complaint, a complaint that exists because Sheila Paquette is the one who decided to travel back across the state to report the unexplained injuries to a law enforcement agency.

It was Sheila Paquette, sister and guardian, who insisted that the case be brought to trial, despite four postponements, witness no-shows, and scheduling snafus that threatened to kill it over a more than two-year period.

It was also Sheila who saw to it that investigations were conducted by the Massachusetts State Police and the Disabled Persons Protection Com-

mission, and who pursued the case with the Assistant District Attorney's office.

Although Mr. Saunders was fired from his job at the Center for Human Development, he was found not guilty, and this case is over.

But the question remains. Who injured Jack Burns?

The court proceeding featured a number of other troubling issues, as well.

Under questioning by his attorney, Saunders mentioned that the CHD worker who arrived late at the West Springfield house to care for Burns on the next shift was "agitated," and involved in some sort of verbal altercation, implying perhaps that the other worker was the one who committed the assault. Over the two-year period since the original event, that individual was subpoenaed to testify three times. He was a no-show on each occasion, including the day the trial finally occurred. A person is ordered to appear in court but refuses? What are the consequences for him? Apparently, nothing.

Why did Assistant D.A. Kerry Whalen fail to even mention during the trial the State Police and DPPC investigations, investigations which apparently resulted in sufficient reason to move the case forward? Why were neither of those agencies represented in the courtroom?

The DPPC is the investigative arm of the Department of Developmental Services. What is the role and responsibility of DDS, the agency that contracts with Jack Burns' care providers? Why is there so little DDS assistance for the guardian in these situations?

The question remains. Who injured Jack Burns?

During one of the breaks in the trial, Judge Peter Kilmartin asked the defense and prosecuting attorneys to provide a legal definition of "intellectually disabled" before he gave final instructions to the jury. They came back with wording patched together from a previous court case and phrasing from DDS regulations. How is it that a judge who is presiding over a trial in which the sole charge is "Assault and Battery on an Intellectually Disabled

Person," has to ask the attorneys to define what "intellectually disabled" means under the law, at a point when the trial is almost over?

This case raises many questions, but it has made one point abundantly clear. Developmentally disabled individuals are vulnerable, and they need vigilant, active guardians to pursue justice because the numerous agencies involved don't communicate very effectively with each other. Each performs its own narrowly focused task, and passes the job along to the next. Safeguards to provide protection and justice for developmentally disabled persons are weakly linked. The only strong thread tying them all together in this instance was the persistent guardian. Without Sheila Paquette's initiative, without her untiring determination to treat the assault on her brother as a criminal matter, what happened to Jack Burns would never have reached the inside of a courtroom.

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