

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JARRELL C. CRAWLEY,	§	
	§	No. 2, 2008
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 0701009858
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: March 18, 2009
Decided: May 5, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 5th day of May, 2009, on consideration of the briefs of the parties, it appears to the Court that:

1) Jarrell C. Crawley appeals from his conviction, following a jury trial, of second degree assault. Crawley argues that there was insufficient evidence to support the conviction inasmuch as the victim testified that he was not injured. We agree and reverse.

2) On January 10, 2007, Crawley and Ryan Resop tried to rob the Chelsea BP gas station and convenience store in New Castle, Delaware. They were wearing

masks and gloves, and Crawley was carrying a BB gun. Crawley pointed the gun at the clerk, Harminder Minhas, and Resop demanded money. While Minhas was backing away from the cash register, Crawley shot him in the hand with the BB gun. Minhas retreated to an office, locked himself inside, and then shouted at the two men that he had called the police. Crawley and Resop fled without taking anything.

3) The two were more successful in their second attempt, approximately fifteen minutes later. They went into the Moores Lane Citgo and stole cigarettes and about \$200 in cash. In the course of that robbery, Cawley shot the clerk in the eye and Resop punched him. The next day the men robbed Jay's Market in Newark, Delaware. This time, the police apprehended them, after a high speed chase.

4) Crawley was convicted of two counts of first degree robbery, attempted first degree robbery, three counts of wearing a disguise during the commission of a felony, two counts of second degree assault, and three counts of second degree conspiracy. He appeals only the conviction of second degree assault relating to Minhas. At trial, Minhas testified that he was shot in the right hand. When asked what kind of injury he had, Minhas replied, "No, I didn't have no injury." Minhas also testified that the BB shot did not leave a mark on his hand.

5) A person is guilty of second degree assault if he "recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous

instrument.”¹ In *Harris v. State*,² this Court held that a *de minimus* injury, which does not cause “impairment of physical condition or substantial pain,”³ will not support an assault conviction. In light of Minhas’s testimony, the State concedes that there is insufficient evidence to support the assault conviction. The State argues, however, that Crawley should be convicted of the lesser included offense of attempted second degree assault.

6) Under Article IV § 11(1) (b) of the Delaware Constitution, this Court has the power to direct the trial court to enter a judgment of conviction on a lesser included offense. But “[t]his power will . . . be exercised only in a clear case when the accused’s rights to a jury trial and due process will not be prejudiced.”⁴ That standard has not been met. The State proceeded against Crawley on the basis that the assault either was reckless or intentional. The lesser included offense of attempted second degree assault requires intent.⁵ Because we cannot determine whether the jury’s conviction was based on a finding of recklessness or intentional conduct, this Court will not enter a conviction on the lesser included offense.

¹11 *Del. C.* § 612 (a) (2).

²965 A.2d 691, 695 (Del. 2009).

³11 *Del. C.* § 222 (22).

⁴*Dalton v. State*, 252 A.2d 104, 105-6 (Del. 1969).

⁵*Rambo v. State*, 939 A.2d 1275, 1280 (Del. 2007).

NOW, THEREFORE, IT IS ORDERED that the judgment of conviction for second degree assault involving Harminder Minhas is hereby REVERSED. This matter is remanded to the Superior Court for further action in accordance with this decision. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger
Justice