

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
LEON PURNELL BERRIEN,		
Appellant		No. 1098 WDA 2011

Appeal from the Judgment of Sentence February 22, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0010241-2010

BEFORE: STEVENS, P.J., FORD ELLIOTT, P.J.E., and MUNDY, J.

MEMORANDUM BY STEVENS, P.J.

Filed: January 10, 2013

Appellant Leon Purnell Berrien appeals from the February 22, 2011 judgment of sentence entered by the Court of Common Pleas of Allegheny County after Appellant was convicted of Aggravated Assault¹ and Recklessly Endangering Another Person.² We affirm.

The facts of this case are as follows:

On June 4, 2010, Regina Booker was admitted as a patient to St. Margaret Hospital in Pittsburgh, Pennsylvania to receive treatment following a stroke. (T.T. 7, 22, 31). During her treatment, she suffered from mobility issues including an inability to walk independently. (T.T. 23, 32). Ms. Booker also had balance and vision problems. (T.T. 31). She required assistance getting in and out of bed and needed a walker and someone to stand by her as she walked. (T.T. 23, 32). Her

¹ 18 Pa.C.S.A. §2702(a)(1).

² 18 Pa.C.S.A. §2705.

neurologist placed her on blood thinners because her blood clotted too fast. (T.T. 7, 31). During the course of her stay at St. Margaret Hospital, Ms. Booker was visited daily by Appellant, who was her boyfriend at the time. (T.T. 6, 7, 13, 14-15, 24). Because of his frequent visits, hospital staff set up a cot for Appellant to sleep on in Ms. Booker's room. (T.T. 7, 15, 24). Appellant was fully aware of Ms. Booker's fragile medical condition and the treatment she was receiving. (T.T. 7).

At approximately 3:00 AM on June 20, 2010, Appellant arrived at the hospital in an intoxicated state. (T.T. 8, 9, 16). Appellant demanded that Ms. Booker engage in sexual activities with him, stating "you're going to suck my dick or fuck me tonight." (T.T. 8, 17). Ms. Booker told him to cut it out and go to sleep on the provided cot. (T.T. 8). Ms. Booker then fell asleep. (T.T. 10).

Hours later, Ms. Booker was woken up by Appellant punching her in the face. (T.T. 10). Ms. Booker stated that when she woke up, she "thought the ceiling was falling on me, but it was his fist." (T.T. 10, 16, 17). Appellant punched Ms. Booker a total of three or four times, in the nose, eyes and top of her head. (T.T. 10, 21). At this time, Appellant and Ms. Booker were the only two individuals in the room, with the door closed. (T.T. 10, 26). Unable to move or get away from the attack, Ms. Booker screamed for help until the nurses arrived. (T.T. 26). A nurse reported that when she entered the room, she observed Ms. Booker seated at the edge of her bed with her hand up in a defensive position with Appellant standing over her. (T.T. 26, 28). After seeing the nurse enter the room, Appellant fled the hospital. (T.T. 10, 27). Ms. Booker was short of breath, bleeding from the nose, and in medical distress. (T.T. 10, 17, 26-27).

Ms. Booker required emergency medical care including compression to her wounds, and ice packs to her face to attempt to slow the bleeding. (T.T. 10, 27). Her situation was especially precarious because of the anti-coagulation therapy, which placed her at great risk of inter-cranial hemorrhage, brain injury, and death. (T.T. 7, 26-27, 31, 33-35). She suffered two black eyes and a broken nose as a result of the beating, and surgery was required to address that injury. (T.T. 11, 21, 32).

Several days after the surgery, she started vomiting blood and was more lethargic than usual. (T.T. 33). It was determined that the blood she was vomiting was likely a result of Appellant's attack as the blood from her nose was dripping down into her throat and she was anemic. (T.T. 33). Her condition required some blood transfusion. (T.T. 33). As a result of the assault Ms.

Booker, had to spend several additional weeks in the hospital, and she was released from the hospital on July 7, 2010. (T.T. 38).

As a direct result of Appellant's assault on Ms. Booker, she now suffers from: (1) permanent facial disfigurement in and about her nose; (2) recurrent facial pain; (3) difficulty breathing due to the change in the structure of her nose; and, (4) loss of her sense of smell. (T.T. 11-13, 35-36). Ms. Booker may require additional surgery for her injuries. (T.T. 35).

Trial Court Opinion, 6/22/12, at 4-6.

On November 22, 2010, Appellant appeared before the Court of Common Pleas of Allegheny County for a bench trial and was found guilty of Aggravated Assault and Recklessly Endangering Another Person. On February 22, 2011, the trial court sentenced Appellant to five to ten years imprisonment, ordered him to comply with DNA registration and drug and alcohol evaluation and screening, required him to attend anger management classes, and prohibited him from having any contact with the victim. Appellant filed a Post-Sentence Motion on March 1, 2011, which the trial court denied on June 9, 2011. Appellant filed a timely notice of appeal on July 6, 2011, and subsequently filed a Concise Statement of Errors Complained of on Appeal on September 2, 2011.

In his brief, Appellant raises the following issue for our review:

Was the evidence presented at trial insufficient to sustain a conviction for aggravated assault where [Appellant] did not have the intent to cause serious bodily injury, and did not in fact cause serious bodily injury?

Appellant's brief at 5.

Appellant claims that the evidence was insufficient to support his conviction for aggravated assault. In reviewing a sufficiency challenge, we apply the following well-settled principles:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Brown, 23 A.3d 544, 559-560 (Pa. Super. 2011), quoting ***Commonwealth v. Hutchinson***, 947 A.2d 800, 805 (Pa. Super. 2008).

A person may be convicted of aggravated assault under Section 2702(a)(1) of the Crimes Code if he “attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life....” 18 Pa.C.S.A. § 2702(a)(1). “Serious bodily injury” is defined as “bodily injury which creates a substantial risk of death or which causes

serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S.A. § 2301. **See *Commonwealth v. Nichols***, 692 A.2d 181, 184 (Pa. Super. 1997) (victim’s broken jaw that was wired shut was serious bodily injury as the victim’s eating ability was impaired); ***Commonwealth v. Caterino***, 678 A.2d 389, 393 (Pa. Super. 1996) (finding victim suffered serious bodily injury when his nose was broken and his artery was severed requiring three hours of emergency medical attention).

In this case, the trial court made specific findings that “(1) Appellant delivered several punches to the face of the victim as she lay in a hospital bed recovering from a stroke; (2) Appellant knew or should have known that the risk of serious bodily injury was great; [and] (3) Appellant’s actions resulted in disfigurement of her nose and the inability to smell.” Trial Court Opinion, 6/22/12 at 8. As a result, the trial court concluded that the Commonwealth met its burden of proving that Appellant intended to cause serious bodily injury and actually did cause Ms. Booker serious bodily injury.

First, Appellant argues that the trial court erred in finding Ms. Booker’s injuries constituted serious bodily injury because she did not need immediate surgery on her nose and the “slight” change in appearance of her nose is not within the purview of what Section 2301 refers to as “serious, permanent disfigurement.” Appellant’s Brief at 19. Appellant agrees that a loss of one’s sense of smell would qualify as a serious bodily injury, but

contends there was not enough evidence presented at trial to determine whether Appellant's attack or Ms. Booker's stroke caused the loss of her sense of smell. *Id.*

We agree with the trial court's finding that Appellant caused serious bodily injury to Ms. Booker, a defenseless victim who was sleeping in a hospital bed after recovering from a stroke. The Commonwealth presented medical testimony to show Appellant's attack on Ms. Booker's head could have caused an inter-cranial hemorrhage given her fragile condition. Booker received a CT scan following the incident that showed a nasal fracture resulting in permanent nose disfigurement. Doctors could not operate immediately as Ms. Booker was on blood thinner and doctors had to wait for the anticoagulant to reverse. As Ms. Booker experienced complications after the surgery in which she vomited blood, she was transferred to a separate hospital floor where she received blood transfusions. Ms. Booker had to stay in the hospital for several more weeks as a result of Appellant's attack. The trial court found Ms. Booker testified credibly when she claimed that she lost her sense of smell after Appellant's attack. We will not disturb the credibility findings of the trial court as factfinder. *See Brown*, 23 A.3d at 560. The record provides ample evidence to establish Appellant caused Ms. Booker

serious bodily injury due to her permanent disfigurement and loss of the function of her nose.³

In addition, Appellant argues that he did not have the necessary *mens rea* to cause serious bodily injury to Ms. Booker because there was insufficient evidence presented at trial to establish that Appellant possessed the requisite degree of recklessness to sustain a conviction for aggravated assault. *Id.* at 24. As the Commonwealth proved Ms. Booker sustained serious bodily injury, the *mens rea* requirement could be satisfied with evidence that Appellant “acted intentionally, knowingly, or with a high degree of recklessness that included ‘an element of deliberation or conscious disregard of danger.’” ***Commonwealth v. Faulk***, 928 A.2d 1061, 1070 (Pa. Super. 2007).

However, although only a showing of recklessness was required, we find the Commonwealth presented sufficient evidence to show Appellant intentionally caused Ms. Booker serious bodily injury. When it is a person’s conscious object to engage in conduct of a certain nature or to cause such a

³ We note that in lieu of finding Appellant caused the victim serious bodily injury, the trial court also could have sustained Appellant’s conviction under Section 2701 by finding that Appellant *attempted* to cause Ms. Booker serious bodily injury. 18 Pa.C.S.A. § 2702(a)(1). “A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S.A. § 901. ***See Caterino***, 678 A.2d at 391 (stating that the issue of whether the victim suffered serious bodily injury was irrelevant because “an attempt to inflict serious bodily harm is punishable as if the attempt succeeds”) (citing 18 Pa.C.S.A. § 2702(a)(1)).

result, he is acting intentionally with respect to a material element of an offense. 18 PA.C.S.A. § 302(b)(1)(i). The Commonwealth may present direct or circumstantial evidence to prove a defendant intended to cause serious bodily injury. **Matthew**, 589 Pa. at 492, 909 A.2d at 125. Our courts apply a totality of the circumstances test to determine whether a defendant intended to inflict serious bodily injury and may consider factors, not limited to, but including:

evidence of a significant difference in size or strength between the defendant and the victim, any restraint on the defendant preventing him from escalating the attack, the defendant's use of a weapon or other implement to aid his attack, and his statements before, during, or after which might indicate his intent to inflict injury.

Matthew, 589 Pa. at 492, 909 A.2d at 1257, citing **Alexander**, 477 Pa. at 193, 383 A.2d at 889.

In this case, the trial court found that there was clearly a difference in strength between Appellant and his victim. Appellant, who the trial court described as a "full-bodied male," attacked Ms. Booker, who was recovering from a stroke, confined to a hospital bed, and suffered mobility issues. When Appellant attacked her, Ms. Booker was sleeping and defenseless. Although Appellant knew of Ms. Booker's fragile state, he proceeded to punch Ms. Booker multiple times in the head. Appellant's statements to Ms. Booker before the attack indicate he was angry with her because she refused to perform oral sex on him. Appellant stopped his attack only because hospital personnel entered the room after hearing Ms. Booker scream.

After reviewing the record, briefs, and applicable law, we conclude the trial court did not err in ruling that the evidence was sufficient to support Appellant's conviction for aggravated assault.

Judgment of sentence affirmed.