

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ALAN E. BOWEN,	:	
	:	
Appellant	:	No. 1556 WDA 2012

Appeal from the Judgment of Sentence entered September 26, 2011 in the Court of Common Pleas of Mercer County, Criminal Division, at No(s): CP-43-CR-0000064-2011.

BEFORE: BENDER, MUNDY, and STRASSBURGER,\* JJ.

MEMORANDUM BY STRASSBURGER, J.: FILED: May 3, 2013

Alan E. Bowen (Appellant) appeals *nunc pro tunc* from the judgment of sentence entered September 29, 2011, following his convictions for one count each of aggravated assault, recklessly endangering another person, and harassment, as well as two counts of simple assault.<sup>1</sup> We affirm.

The trial court summarized the relevant facts as follows:

[Appellant], also known as Catfish, a member of the Pagan Motorcycle Club, walked into the Mustang Bar located in Mercer on December 31, 2010. He came up behind the victim who was seated on a stool at a table, and put him in a headlock with one arm and began to punch the victim in the mouth and back of the head with a closed fist multiple times. [The victim] stated that he heard [Appellant] say "I'll f-g kill you." He further testified that he was attacked from behind, as did two eyewitnesses, Richard McConnell and Tammy Amos. McConnell transported the victim to the Emergency Room at the Grove City Medical Center because the victim wished to avoid ambulance expense. It is uncontroverted that the victim lost two front teeth and received

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<sup>1</sup> 18 Pa.C.S. §§ 2702(a)(1), 2705, 2709(a)(1), and 2701(a)(1), respectively.

\* Retired Senior Judge assigned to the Superior Court.

stitches to the inside of his mouth, as well as an injured jaw bone. Six photographs of his injuries were taken the following day after the assault and were admitted into evidence. Additionally, the victim's dentist testified to the damage done to the victim's teeth and mouth.

Trial Court Opinion, 1/19/2012, at 2 (citations omitted).

Following a jury trial on July 13, 2011, Appellant was convicted of the aforementioned crimes. Appellant was also found not guilty on one count of terroristic threats.<sup>2</sup> On September 26, 2011, the trial court sentenced Appellant to an aggregate term of one and a half to three years' imprisonment.

Appellant filed a timely post-sentence motion on September 28, 2011, challenging the sufficiency of the evidence presented to convict him of aggravated assault. Appellant's motion was denied on January 19, 2012. This appeal followed.<sup>3</sup>

Appellant presents the following question for our review: "[w]hether the [t]rial [c]ourt erred in denying the Appellant's post-sentencing motion

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<sup>2</sup> 18 Pa.C.S. § 2706(a)(1).

<sup>3</sup> Appellant did not initially file a direct appeal. On May 17, 2012, Appellant filed a timely petition pursuant to the Post-Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. In his petition, Appellant alleged that his trial counsel did not notify him of the trial court's decision to deny his post-sentence motion until Appellant sent counsel a letter in April of 2012. As a result, Appellant claimed, he was deprived of his right to a direct appeal. PCRA counsel was appointed on May 22, 2012, and an amended PCRA petition was filed. A PCRA hearing was held on September 6, 2012. That same day, with agreement from the Commonwealth, the PCRA court reinstated Appellant's direct appeal rights *nunc pro tunc*. Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925.

arguing that there was not sufficient evidence to convict him of aggravated assault?" Appellant's Brief at 4.

[O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

***Commonwealth v. Stays***, 40 A.3d 160, 167 (Pa. Super. 2012) (internal quotations and citations omitted).

Under the Crimes Code, a person may be convicted of aggravated assault, graded as a felony of the first degree punishable by a maximum term of incarceration of twenty years, if he or she "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 further defined by the Crimes Code 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.

***Commonwealth v. Bruce***, 916 A.2d 657, 661 (Pa. Super. 2007).

To sustain a conviction for aggravated assault, the Commonwealth need not show that serious bodily injury actually occurred, but only that the defendant attempted to cause serious bodily injury to another person. An "attempt" exists when the accused intentionally acts in a manner which constitutes a substantial or significant step toward perpetuating serious bodily injury upon another.

*Commonwealth v. Stevenson*, 894 A.2d 759, 774 (Pa. Super. 2006) (citations and some quotation marks omitted). "Each case must be evaluated on its own particular facts, but under appropriate circumstances, even a single punch to the face can constitute aggravated assault." *Commonwealth v. Faulk*, 928 A.2d 1061, 1070 (Pa. Super. 2007).

Appellant's sole argument on appeal is that "the victim's injury did not amount to serious bodily injury," because "the loss of [the victim's] teeth did not arise to a permanent loss or impairment of the function of a bodily organ." *Id.* at 7-8. Appellant asserts that "teeth should not be considered the same as more traditional body organs when considering whether or not they amount to serious bodily injury under the aggravated assault statute." *Id.* at 8. The trial court rejected this argument and concluded that sufficient evidence was produced at trial to support Appellant's conviction. Trial Court Opinion, 1/19/2012, at 6. We agree.

As observed *supra*, a conviction for aggravated assault pursuant to 18 Pa.C.S. § 2702(a)(1) requires only that a defendant **attempt** to cause serious bodily injury, not that he actually inflict it. The testimony presented at trial established that Appellant walked up behind the victim and began to punch him in the head and face. N.T., 7/13/2011 (Vol. 1), at 23-24, 72-73, 97. The victim was struck "more than a dozen" times. *Id.* at 25. During the attack, Appellant told the victim "I'll f'g kill you." *Id.* Thus, Appellant's argument fails, as sufficient evidence was presented to demonstrate that he

**attempted** to cause serious bodily injury to the victim by repeatedly striking a vital part of the body, his head.

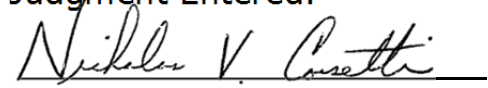
Even reaching the question of whether Appellant's conduct actually caused "serious bodily injury," we would not grant him relief. As noted above, "serious bodily injury" is defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S. § 2301. The victim's dentist, Eric Thomas Mong, testified that when he treated the victim a few days after the indecent, the victim had one loose tooth and another that was fractured. N.T., 7/13/2011-7/14/2011 (Vol. 2), at 25-26. Both of these teeth were permanently lost. *Id.* at 38. Dr. Mong explained that losing even one tooth can cause "a lot of problems," including "problems with the occlusion," and aesthetic issues. *Id.* at 37-38. The trial judge inquired of Dr. Mong whether "a tooth [is] considered an organ of the body," and the dentist indicated that it was. *Id.* at 48. Thus, under the plain language of 18 Pa.C.S. § 2301, the loss of two of the victim's teeth qualifies both as a "serious, permanent disfigurement," as well as a "protracted loss or impairment of the function of any bodily member or organ." No relief is warranted.

Judgment of sentence affirmed.

Judge Mundy concurs in the result.

J-S17040-13

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casetti", is written over a solid horizontal line.

Deputy Prothonotary

Date: 5/3/2013