

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
RAHEEM CHILDS,		
Appellant		No. 1793 EDA 2010

Appeal from the Judgment of Sentence May 24, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007458-2009-MC-51-CR-0005361-
2009

BEFORE: STEVENS, P.J., BOWES, J., and PLATT, J.*

MEMORANDUM BY STEVENS, P.J.

Filed: February 12, 2013

This is an appeal from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County following Appellant's conviction on the charge of simple assault, 18 Pa.C.S.A. § 2701(a)(1). Appellant contends the evidence is insufficient to sustain his conviction. We affirm.

The relevant facts and procedural history are as follows: Appellant was arrested, and he filed a pre-trial motion seeking the dismissal of his case on the basis of a speedy trial violation. On February 19, 2010, the matter proceeded to an evidentiary hearing, following which the trial court denied the motion to dismiss. On May 24, 2010, represented by counsel,

* Retired Senior Judge assigned to the Superior Court.

Appellant proceeded to a waiver trial at which Philadelphia Police Sergeant Walt Medycki and Appellant testified. Specifically, on direct-examination, Sergeant Medycki testified that, on February 3, 2009, at approximately 5:30 a.m., he was on duty when the following transpired:

Q. Can you tell Your Honor the circumstances that lead to interacting with [Appellant] on that date.

A: [Appellant] was inside the 35th District, CCTV, and the holding area and he was being released from custody and he was being taken out of the holding cell. He was taken out of a holding cell and walked out into the public area by a female officer. I heard a bunch of screaming or loud commotion and noise. It sounded like a fight in the hallway. I went out to investigate and I found [Appellant] in one of my female officer's faces screaming and yelling.

Q. And where is this?

A. This was in the hallway. If people want to come in and make a complaint, they come in that hallway and through that hallway.

Q. When you observed [Appellant], what did you [do]?

A. I inquired. I said calm down and I said stop the yelling. I was trying to figure out what was going on. The officer told me he was releasable.

[DEFENSE COUNSEL]: Objection to what the officer said.

[SERGEANT MEDYCKI]: The information I received is that he was releasable but—

[DEFENSE COUNSEL]: Objection to the information that the officer received.

Q. Officer, just testify as to what your interaction was directly with [Appellant].

A. His business was done. He was refusing to leave and he was screaming and yelling and he was causing a hazardous condition in my building and I escorted him out of my building.

Q. Did you ask him to leave?

A. Yes, I did.

Q. How many times?

A. At least three.

Q. And he did not leave?

A. Nope.

Q. And what happened[?]

A. I escorted him out of the building. I took him to the front door. I opened the door and he walked out and down the steps and I turned around.

Q. At that point, what, if anything occurred?

A. Well, someone yelled, Sarge—

[DEFENSE COUNSEL]: Objection to what someone yelled.

[ADA]: It's not offered for the truth of the matter, Your Honor. That is why he is going to say that he did what he did.

THE COURT: Sustained. Testify to what he did.

Q. Continue.

A. I turned around and [Appellant] was approximately three feet from me and he spit in my face and charged me with a raised closed fist.

[ADA]: Indicating for the record that the sergeant has his right hand or fist balled and raised above his head.

THE COURT: Slow down for one second. Repeat that again.

[SERGEANT MEDYCKI]: He spit in my face and the spit went inside my mouth and just around my eyes. He was just about three feet from me. He started running and charging toward me and he put his closed fist up in the air as if to punch me.

THE COURT: Stop for a second, please.

Q. You testified he charged at you. How close did he get to you?

A. Like right up. Like a foot.

Q. Okay. Where or what did you do in response to those actions?

A. As he was charging me, I punched him and he went to the ground.

Q. Where did you punch him?

A. Face.

Q. And how close did his fist come [to] you?

A. Just missed me.

Q. Did he swing?

A. Yes.

Q. Where did he—point to the area where the swing was aimed at?

A. The left side of my face.

Q. Once you struck him, what happened?

A. He went to the ground. I went over and attempted to cuff him and he was resisting. The female officer came out and she helped me. He got cuffed and secured and he was walking back in the building.

N.T. 5/24/10 at 9-13.

Sergeant Medycki indicated he received preventive human immunodeficiency virus (HIV) treatment, from which he suffered an adverse reaction, requiring him to miss approximately six weeks of work. N.T. 5/24/10 at 13-14. He also suffered a cut to his finger from Appellant's teeth when Sergeant Medycki punched him. N.T. 5/24/10 at 13.

On cross-examination, Sergeant Medycki testified Appellant was upset because, when he was taken into custody, the police confiscated his bra, which is police policy. N.T. 5/24/10 at 16-18. Sergeant Medycki clarified as follows on cross-examination regarding the incident at issue:

Q. Did you see him spit or did you just feel that?

A. No. I actually saw him go and spit and I got hit in the face with spit.

Q. How far away was he when he spit on you?

A. About three feet.

Q. Three feet. And then at that point, that's when you moved to punch him; correct?

A. At that point, he charged me with his fist in the air.

Q. From a starting distance of three feet?

A. Approximately.

Q. So closed fist made about six inches?

A. This all happened very fast.

N.T. 5/24/10 at 22.

At this point, defense counsel showed Sergeant Medycki the police incident report, which Sergeant Medycki completed after the incident. N.T. 5/24/10 at 22-23. Sergeant Medycki confirmed the report indicated Appellant did not start swinging until after Sergeant Medycki attempted to

place him in custody for spitting in his face. N.T. 5/24/10 at 23-24. Sergeant Medycki denied making comments to Appellant about his pink T-shirt or shoes, and he had no memory of the female officer pulling hair extensions out of Appellant's head. N.T. 5/24/10 at 24. He noted Appellant was carrying his wig, bra, and, perhaps, a purse, as he was leaving the police station. N.T. 5/24/10 at 25.

On redirect-examination, Sergeant Medycki indicated he prepared an arrest memo, which read as follows: "On 2/3/09 I was escorting a male out of the district after he was released from CCTV for prior arrest. The male spit in my face and swung at my head with a closed fist. The male was arrested for assault on police." N.T. 5/24/10 at 27-28.

Appellant took the stand in his own defense and admitted he was intoxicated when the incident at issue occurred. N.T. 5/24/10 at 30. He testified that, after he was removed from the holding cell, he told the female police officer he wanted to speak to one of her supervisors, Captain John McCloskey. N.T. 5/24/10 at 29. He testified he wanted to speak to Captain McCloskey because the female police officer was degrading him. N.T. 5/24/10 at 29. Appellant indicated that, at some point, Sergeant Medycki approached him and told him to leave. N.T. 5/24/10 at 30. As the sergeant and the female police officer escorted him out of the building by holding his jacket, he kept asking to speak to Captain McCloskey. N.T. 5/24/10 at 30-31. As Appellant was standing on the steps, Sergeant Medycki punched him,

and he fell to the ground, at which point the female police officer snatched off Appellant's hair extensions. N.T. 5/24/10 at 32. Appellant testified he did not "fight back;" however, one of the officers continued to hit him as he was balled up on the ground. N.T. 5/24/10 at 32.

On cross-examination, Appellant admitted the sergeant asked him several times to leave the police station; however, Appellant refused to do so. N.T. 5/24/10 at 33. Appellant admitted he was intoxicated; however, he indicated his memory was unaffected by his state of intoxication. N.T. 5/24/10 at 33-34.

At the conclusion of all testimony, the trial court found the following:

I find that the officer testified to the best of his recollection. However, I also find that there is some discrepancies regarding the punching incident or the swinging incident rather of [Appellant] in the documentation and the paperwork.

Based upon the case law, the spitting incident only rises to the level of simple assault. The case law makes the spitting incident a simple assault. [Appellant] testified to his level of intoxication that he does not remember everything.

So I find [Appellant] guilty of simple assault and not guilty of aggravated assault as a punch and the remaining contact, and not guilty of reckless endangerment.

N.T. 5/24/10 at 35-36.

Appellant elected to proceed immediately to sentencing, and the trial court sentenced him to fifteen days to thirty days in prison, to be followed by one year of probation. This timely counseled appeal followed, and all Pa.R.A.P. 1925 requirements have been met.

Appellant's sole issue on appeal is the evidence is insufficient to sustain his conviction for simple assault. Specifically, Appellant argues the evidence is insufficient to demonstrate Sergeant Medycki actually suffered bodily injury or Appellant attempted to cause bodily injury to Sergeant Medycki when Appellant spit on him.¹

In evaluating a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. We may not weight the evidence and substitute our judgment for the fact-finder. To sustain a conviction, however, the facts and circumstances which the Commonwealth must prove must be such that every essential element of the crime is established beyond a reasonable doubt.

Commonwealth v. Cain, 906 A.2d 1242, 1244 (Pa.Super. 2006), *appeal denied*, 591 Pa. 670, 916 A.2d 1101 (2007) (citations omitted). Lastly, the finder of fact may believe all, some or none of a witness's testimony.

Commonwealth v. Bullock, 948 A.2d 818, 823 (Pa.Super. 2008) (citations omitted).

¹ Initially, we note the trial court rejected Sergeant Medycki's testimony regarding Appellant punching or attempting to punch Sergeant Medycki, and instead, the trial court convicted Appellant solely on the basis he spit into the mouth and eyes of the sergeant. Under our standard of review, we are bound by the trial court's credibility determinations and factual findings. *Commonwealth v. Bullock*, 948 A.2d 818 (Pa.Super. 2008).

Pertaining to simple assault, the Crimes Code provides, in relevant part, that “[a] person is guilty of assault if he: (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another.” 18 Pa.C.S.A. § 2701(a)(1). “Bodily injury” is defined as “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S.A. § 2301. “The Commonwealth need not establish the victim actually suffered bodily injury; rather, it is sufficient to support a conviction if the Commonwealth establishes an attempt to inflict bodily injury. This intent may be shown by circumstances, which reasonably suggest a defendant intended to cause injury.” *Commonwealth v. Martuscelli*, 54 A.3d 940, 948-949 (Pa.Super. 2012) (citations omitted).

Under the particular facts in this case, we conclude the evidence sufficiently establishes Sergeant Medycki actually suffered bodily injury as a result of Appellant spitting in his mouth and eyes. Sergeant Medycki specifically testified that, as a result of Appellant’s spit going directly into his mouth and eyes, he went to the hospital, where he was prescribed preventive HIV treatment, which caused him to be so ill he missed approximately six weeks of work.² N.T. 5/24/10 at 13-14. The trial court

² Appellant does not dispute that it is reasonable for a police officer to seek medical advice, and if so advised, to undergo precautionary testing and treatment for HIV, where a defendant spits in the officer’s face, regardless of whether the defendant is a known carrier for HIV. *See Commonwealth v. Harriott*, 919 A.2d 234 (Pa.Super. 2007) (where the defendant spit in an
(Footnote Continued Next Page)

determined Sergeant Medycki suffered an impairment of physical condition and/or substantial pain due to the treatment he required from Appellant's intentional actions such that Appellant was guilty of simple assault.³ **See** Trial Court Opinion filed 6/1/12 at 10. We agree with the trial court and affirm on this basis. **See *Commonwealth v. Cordoba***, 902 A.2d 1280 (Pa.Super. 2006) (holding cases involving HIV and bodily fluids are no different than other cases in that the Commonwealth may prosecute an individual for committing acts that meet the elements of the crime); 18 Pa.C.S.A. § 2701(a) (setting forth elements for simple assault); 18 Pa.C.S.A. § 2301 (defining "bodily injury").

We note Appellant does not acknowledge or otherwise discuss the fact Sergeant Medycki suffered bodily injury, i.e., he became ill from the prescribed preventive HIV treatment. Rather, Appellant asserts that "[s]pitting, while unsanitary and unpleasant," can never, standing alone, constitute the crime of simple assault. Appellant's Brief at 12. Citing to *(Footnote Continued)* _____

officer's face during her DUI arrest, restitution to pay for precautionary HIV and hepatitis tests was authorized as intermediate punishment since the officer suffered a loss, even in absence of evidence the defendant was a known carrier of such diseases).

³ The Honorable Roxanne Covington sat for Appellant's Rule 600 hearing and bench trial. In her Rule 1925(a) opinion, Judge Covington notes Appellant's bench trial was delayed, in part, due to Sergeant Medycki's adverse reaction resulting from the precautionary HIV treatment. Specifically, as Judge Covington notes, at the Rule 600 hearing, Sergeant Medycki provided details of his adverse reaction, including the fact he became nauseous, weak, lost twenty pounds, and was confined to his home for periods of time. **See** Trial Court Opinion filed 6/1/12 at 10.

Commonwealth v. Brown, 605 A.2d 429 (Pa.Super. 1992), Appellant suggests that, in order to establish simple assault, the Commonwealth was required to prove Appellant (1) carried a disease, which could be transmitted by bodily fluids, and (2) knew he carried such a disease. Appellant's Brief at 12. However, we conclude Appellant has misinterpreted the holdings of **Brown**.

In **Brown**, a prisoner, who had been informed by a prison physician that he was HIV positive, intentionally flung a substance containing fecal matter into the face of a prison guard. Some of the material went into the prison guard's mouth. This Court concluded that, in the absence of any evidence the prison guard suffered actual serious bodily injury, the prisoner was still properly convicted of, *inter alia*, aggravated assault, and the lesser-included offense of simple assault, since the prisoner acted with the specific intent of attempting to cause serious bodily injury when, knowing he was HIV positive and he could transmit the disease through bodily fluids, he threw his fecal matter into the guard's face. **See Brown, supra**. Contrary to Appellant's contention, in **Brown**, we did not limit the crime of simple assault as Appellant suggests on appeal. Additionally, unlike in **Brown**, in the case *sub judice*, the Commonwealth produced evidence Sergeant Medycki suffered actual bodily injury as a result of Appellant intentionally spitting into his face.

For all of the foregoing reasons, we affirm.

J-A31032-12

Affirmed.