

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: S.M.H. : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
APPEAL OF: S.M.H. : No. 652 WDA 2013

Appeal from the Dispositional Order Entered March 26,
2013 in the Court of Common Pleas of Westmoreland
County Criminal Division at No(s): CP-65-JV-0000541-2012
No. JP-028630

BEFORE: FORD ELLIOTT, P.J.E., WECHT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 12, 2013**

S.M.H. (Appellant) appeals from the dispositional order entered March 26, 2013, after she was adjudicated delinquent of aggravated assault.¹ We affirm.

The juvenile court summarized the relevant facts as follows.

[Appellant and her friend D.C. were housemates at Susan’s Place, a facility in Latrobe, Pennsylvania, for girls with mental health issues. O]n the date of the incident, D.C. became upset because [she was instructed to mop the floor and] there was no water in the mop bucket. While upset and agitated, D.C. started cursing and threatening the victim[, who was a counselor at Susan’s Place]. The victim contacted her supervisor and was instructed to move all of the girls upstairs for hygiene because they were all starting to act up and the situation was starting to get out of control. When the victim instructed the girls to line up, D.C. and [Appellant] were threatening to start a riot[. D.C. also threatened to] “F up” the victim and tear the facility apart.^[2]

¹ 18 Pa.C.S. § 2702(a)(1).

² The juvenile court indicated in its opinion that both Appellant and D.C. threatened to “F up’ the victim and tear the facility apart.” Juvenile Court Opinion, 5/28/2013, at 7, 13. However, a careful reading of the transcript in this case appears to indicate that only D.C. made those specific threats. **See** N.T., 1/18/2013, at 5 (“[D.C.] and [Appellant] were -- mainly [D.C.] -- were

* Retired Senior Judge assigned to the Superior Court

While the other girls were lining up, [Appellant] and D.C. ran upstairs.

Once upstairs, D.C. began tearing up her room and refused to calm down. The victim told D.C. that if she did not calm down she would have to "initiate emergency—safety intervention." The victim attempted to physically restrain D.C. but she was able to break free. While free, D.C. punched the victim in the nose and on the side of her neck. Derek Shank, the victim's co-worker, attempted to assist her in restraining D.C. while a second co-worker, [Deborah] Miller, called 911. A third co-worker, Amber Dablock was instructed to remove all the girls from the area and get them to their rooms.

The victim and Derek Shank eventually restrained D.C. which required the victim to straddle D.C.'s legs. [Appellant then grabbed the victim by the hair and attempted to drag her across the room. Appellant struck the victim as well.] The victim testified:

I was straddling [D.C.] trying to get to the other side of her, she was kicking and stuff. And the next thing I remember is being completely on the opposite side of the room and being hit in the head.

The victim further testified:

I didn't see [Appellant] hit me in the head, I was on my knees and being dragged and I couldn't see. At the point where I was able to stand up, I —then I could see [Appellant] —you know, she still had my hair in her hand.

The victim stated that while she did not see [Appellant] punch her, she felt the strikes. The victim stated that she was punched in the head by [Appellant]. Once the victim was able to get free from [Appellant's] grip, she went over by the door way and observed [Deborah] Miller attempting to keep [Appellant] near the bunk beds. The victim look[ed] at the floor and observe[d] large drops of blood. The victim ha[d] her right hand on the door and she turn[ed] her hand over and close[d] it and

saying they were going to start a riot, they were going to -- she was going to F me up, she was going to tear the place apart.").

s[aw] the blood squirt from her hand onto the door. The victim stated that the blood squirted out of her hand in, "a foot long rainbow pattern." The victim stated that she immediately went into the bathroom and looked at herself. The victim stated, "...I was bleeding from my nose, both sides of my nose, my mouth, the side of my head and my hand."

With regard to her injuries, the victim stated:

I have a concussion I'm still receiving treatment for. And my right hand middle finger, I received a staph infection, um, I had 101 fever for ten days trying to fight that infection...I was given an injection of antibiotic and given over-the-counter antibiotics that caused secondary infections that I am still trying to get rid of. I had hurt my knee; I'm still seeing a doctor for that. I bruised the back of my kneecap...I have, um injured my neck is like, very tense, I have, like, limited mobility in being able to move it from side to side or up and down...the concussion is really the worst part, the memory loss, irritability, depression. I'm seeing a psychologist for that as well...the projectile vomiting is—it's ridiculous.

Juvenile Court Opinion, 5/28/2013, at 7-11 (footnote and citations to the record omitted).

A hearing was held on January 18, 2013. At the conclusion of the hearing, the juvenile court found that Appellant had committed aggravated assault. However, the juvenile court did not formally adjudicate Appellant delinquent or enter a dispositional order, as the court believed that the case needed to be transferred to Appellant's home state of West Virginia for these purposes. On March 21, 2013, an additional hearing was held at which the juvenile court concluded that it was mistaken, and that these matters should

have been handled in Westmoreland County. Thus, the juvenile court adjudicated Appellant delinquent of aggravated assault. A dispositional order then was entered on March 26, 2013. Appellant timely filed a notice of appeal. The juvenile court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, and Appellant timely complied.

Appellant now raises the following issues on appeal.

- I. Whether the honorable [sic] [juvenile] court erred in adjudging that there was sufficient [sic] evidence [sic] to adjudicate [sic] the juvenile to be a delinquent on the charge of aggravated [sic] assault?
- II. Whether the honorable [juvenile] court erred in imposing DNA testing [sic] upon the juvenile when there was insufficient evidence [sic] to adjudicate [sic] her delinquent on a felony charge?

Appellant's Brief at 4 (capitalization omitted).

We consider a challenge to the sufficiency of the evidence pursuant to the following standard.

When a juvenile is charged with an act that would constitute a crime if committed by an adult, the Commonwealth must establish the elements of the crime by proof beyond a reasonable doubt. When considering a challenge to the sufficiency of the evidence following an adjudication of delinquency, we must review the entire record and view the evidence in the light most favorable to the Commonwealth.

In determining whether the Commonwealth presented sufficient evidence to meet its burden of proof, the test to be applied is whether, viewing the evidence in the light most favorable to the Commonwealth, and drawing all reasonable inferences therefrom, there is sufficient evidence to find every element of the crime charged. The Commonwealth may sustain

its burden of proving every element of the crime beyond a reasonable doubt by wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not be absolutely incompatible with a defendant's innocence. Questions of doubt are for the hearing judge, unless the evidence is so weak that, as a matter of law, no probability of fact can be drawn from the combined circumstances established by the Commonwealth.

In re V.C., 66 A.3d 341, 348-49 (Pa. Super. 2013) (quoting ***In re A.V.***, 48 A.3d 1251, 1252-53 (Pa. Super. 2012)).

Under the Crimes Code, a person may be convicted of aggravated assault, graded as a felony of the first degree ... 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."

Commonwealth v. Stevenson, 894 A.2d 759, 774 (Pa. Super. 2006) (citing ***Commonwealth v. Galindes***, 786 A.2d 1004, 1012 (Pa. Super. 2001)).

Additionally, once a juvenile is adjudicated delinquent for aggravated assault, Pennsylvania law mandates that he or she provide a DNA sample.

Specifically, 44 Pa.C.S. § 2316(a) states that “[a] person who is convicted or adjudicated delinquent for a felony sex offense or other specified offense or who is or remains incarcerated for a felony sex offense or other specified offense on or after the effective date of this chapter shall have a DNA sample drawn[.]” The phrase “other specified offense” is defined to include “[a] felony offense.” 44 Pa.C.S. § 2303.

Instantly, the juvenile court determined that sufficient evidence was produced to support Appellant’s adjudication of delinquency. The juvenile court concluded that Appellant caused serious bodily injury to the victim and that, in the alternative, “the surrounding circumstances establish that [Appellant] intended to inflict serious bodily injury to the victim.” Juvenile Court Opinion, 5/28/2013, at 12. The juvenile court also concluded that, because Appellant was adjudicated delinquent of a felony offense, she was required to submit a DNA sample. *Id.* at 16.

In response, Appellant argues that the testimony of the victim did not “establish a causal connection between her injuries and the actions of” Appellant, and that expert medical testimony was necessary to confirm that the victim suffered a concussion, and that this concussion qualified as a “protracted loss or impairment of the function of any bodily member or organ” pursuant to 18 Pa.C.S. § 2301. *Id.* at 13-15. Appellant further argues that while she “may have gotten carried away,” the Commonwealth failed to establish beyond a reasonable doubt that Appellant intended to

cause serious bodily injury to the victim. *Id.* at 17. Finally, Appellant asserts that, because this evidence was insufficient to prove aggravated assault, it was inappropriate for the juvenile court to order Appellant to submit a DNA sample. *Id.* at 18.

After reviewing the record in this case, we agree with Appellant that insufficient evidence was produced to prove that she caused serious bodily injury to the victim. While the evidence was sufficient to confirm that the victim's injuries were severe, the victim testified concerning several other possible sources of those injuries. The victim testified that, prior to Appellant's attack, D.C. threw a bottle of deodorant at her, which hit her in the head.³ N.T., 1/18/2013, at 7. She further indicated that D.C. "punched me square in my nose and in the side of my neck," and that D.C. continued to kick and hit her thereafter. *Id.* at 7-9. Most notably, the victim testified that, while struggling with D.C., "I lost my footing and we both ended up on the side. I hit my head off the floor." *Id.* at 9. When asked how many times she was struck by D.C., the victim offered the following testimony.

It was at least twice before I had [Deborah] Miller call 911. There were, like, direct punches to the face. I believe that's what made my nose bleed from both sides. Afterwards, I really -- I can estimate a few, there were kicks, I had bruises in my legs, um, on my neck. I mean -- **as to exactly which strike and from whom caused what bruise or injury, I'm uncertain.**

³ Later, on cross-examination, the victim indicated that the deodorant hit her on the hip. N.T., 1/18/2013, at 32.

Id. at 18-19 (emphasis added). At the hearing, the Commonwealth produced no evidence that indicated that the injuries suffered by the victim were caused by the acts of Appellant, rather than the physical trauma suffered while attempting to restrain D.C.⁴

Nonetheless, as noted *supra*, the aggravated assault statute requires only that a defendant **attempt** to cause serious bodily injury. Our Supreme Court has explained that “[a]n attempt under § 2702(a)(1) requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury.” **Commonwealth v. Matthew**, 909 A.2d 1254, 1257 (Pa. 2006). A totality of the circumstances test must be used to assess whether a defendant possessed the requisite intent. **Id.** at 1257-58. Here, we agree with the juvenile court that sufficient evidence was produced to prove that Appellant attempted to cause serious bodily injury to the victim.

The testimony elicited at Appellant’s hearing confirmed that Appellant dragged the victim by her hair, and that Appellant struck the victim in the head. The victim’s coworker, Deborah Miller, testified that she saw Appellant “grab [the victim’s] hair, trying to drag her,” and that Appellant was kicking

⁴ Because we conclude that the Commonwealth failed to establish that Appellant was the cause of the victim’s injuries, we need not address Appellant’s claim that expert testimony was necessary to prove the existence or severity of those injuries.

at the victim.⁵ N.T., 1/18/2013, at 55-56. Another coworker, Derek Shank, stated that he saw Appellant “had [the victim] by the hair and [was] dragging her around and punching her.”⁶ *Id.* at 42. The victim testified that, prior to the attack, Appellant and D.C. were acting up and threatening to “start a riot.” *Id.* at 5. The victim further testified that, while her memory of Appellant’s attack was hazy, she remembered being dragged and that she felt “strikes.” *Id.* at 19, 24. The victim indicated that, although she did not see Appellant deliver any punches, she felt blows to her head, and then saw Appellant holding her hair. *Id.* at 9, 24. Thus, sufficient evidence was presented from which the juvenile court could infer, from the totality of the circumstances, that Appellant intended to cause serious bodily injury to the victim.

Moreover, because the evidence was sufficient to support Appellant’s adjudication of delinquency for a felony offense, the juvenile court did not err by requiring Appellant to submit a DNA sample pursuant to 44 Pa.C.S. § 2316.

Accordingly, we conclude that Appellant is not entitled to relief, and we affirm the dispositional order.

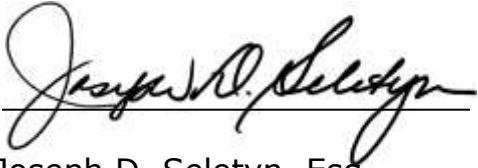
Dispositional order affirmed.

⁵ Deborah Miller stated that she did not know if Appellant’s foot actually made contact with the victim or not. N.T., 1/18/2013, at 59.

⁶ Derek Shank later clarified that he “only saw one punch being thrown.” N.T., 1/18/2013, at 43.

J-S60034-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/12/2013