

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**JEREMY BALL,  
Defendant**

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**No. 490-2008  
CRIMINAL**

**OPINION AND ORDER**

Before this Honorable Court is the Defendant’s Motion for Habeas Corpus/to Dismiss Murder of the Third Degree and Involuntary Manslaughter, filed April 22, 2008. A hearing on the Motion was held on July 22, 2008; decision was deferred since that time due to attempts by the parties to resolve the case. In the beginning of October, Counsel notified the Court that those attempts were unsuccessful and requested the Court rule on the Motion.

On February 29, 2008, the Defendant was arrested and charged with Aggravated Assault at 18 Pa. C.S. § 2702(a)(1), Murder of the Third Degree at 18 Pa. C.S. § 2502(c), Voluntary Manslaughter, provocation by individual killed at 18 Pa. C.S. § 2503(a)(1), and Involuntary Manslaughter at 18 Pa. C.S. § 2504(a). A Preliminary Hearing was held on April 3, 2008, before District Judge C. Roger McRae wherein the charges were held over for Court. The Defendant filed a timely motion challenging the testimony presented by the Commonwealth, alleging they failed to meet their burden of proof as to all of the charges. At the time of the hearing, Defense Counsel orally moved to amend the Motion to include all charges. Over objection of the Commonwealth, the motion to amend was granted.

## ***Background***

The following is a summary of the facts presented at the Preliminary Hearing. Walter Bohner, Jr. (Bohner) was working as a disc jockey at Papagallo's Bar in Muncy, PA on February 29, 2008 when he overheard Jason Sanner (Victim) and Jeremy Ball (Defendant) shouting at each other inside the bar. Bohner related that the Defendant and the victim were initially about fifteen to twenty feet apart, but eventually got up from their seats and began shoving each other. He testified the fight escalated to grabbing, nudging, and pushing and eventually both went on the ground. On the ground, they continued wrestling, with no punches, and then Defendant held the victim down and told him "let's just let it go" and "forget it." Defendant let the victim up and the fight was over for a while, but eventually started back up again. Bohner related he heard the Defendant say "let's take it outside," but the victim said "no, we're going to do it right here," and they started fighting again. This time the fight was more serious with punches being thrown. Bohner testified he saw Defendant punch the victim twice, with at least one being to the head, and believed the blows were hard. After the second hit, the victim just stood there and the Defendant nudged him a little bit and then the victim fell to the floor. Bohner testified the Defendant walked away at this point, but yelled back at the victim "what now, you drunk b\*\*\*h? . . . That will teach you to mess with me." N.T. 4/3/08 pgs. 14-15.

Matthew Kintzer (Kintzer) testified that on the evening of February 29, 2008 he arrived at the bar around 8:00 p.m. Kintzer related he came in, sat down, ordered a beer, and when he went to start playing pool, the Defendant and the victim started arguing. Kintzer related that the argument started because of a phone call made by the victim to the Defendant's ex-wife. He testified the Defendant went over to where the victim was standing and pushed him into the bar. Kintzer then observed the victim punch the Defendant in the head. Kintzer related the Defendant

defended himself and hit the victim back a couple of times. Kintzer then noticed the victim lying on the floor and the Defendant telling him “let it go.” They both went to their respective seats. A few minutes later, the Defendant approached the victim and they started fighting again. The Defendant was hitting the victim in the head and the victim was attempting to hit back but could not; after a few hits the victim went face first into the floor. Kintzer testified the Defendant hit the victim two more times in the back of the head while the victim was on the ground. Defendant then yelled “you got what you deserve now; just leave it alone,” and walked away. Id. at 30.

Kevin Reeder (Reeder), a paramedic employed by the Susquehanna Regional EMS testified he responded to the bar around 9:00 p.m. Reeder testified he went to the patient who was supine on the floor. Reeder related the Automatic Electronic Defibrillator (AED) indicated “no shock”, which means there is no heart rhythm. He also witnessed effective CPR and ventilations in progress. Reeder related his cardiac monitor showed a flat line which means no pulse and the victim was showing some cyanosis, where the skin turns blue from lack of oxygen. The victim was then taken to the emergency room where he was pronounced dead.

The autopsy examination reported the cause of death as “sudden death following altercation due to hypertensive cardiovascular disease.” Autopsy report, 3/2/08 p. 1. The autopsy showed the trauma to the head and the extremities was minor and in and of itself not fatal. The autopsy also reported the enlargement of the victim’s “heart predisposed him to cardiac arrhythmias and cardiac dysfunction. The combination of the enlarged heart, an acute stress response and increased myocardial energy demands secondary to the physical altercation leads to changes in heart rate and blood pressure and ultimately cardiac arrhythmias.” Id. at 3.

## ***Discussion***

In Defendant's Motion for Issuance of Writ of Habeas Corpus he asks the Court to dismiss the Aggravated Assault, Third Degree Murder, Voluntary Manslaughter, and Involuntary Manslaughter charges against him. Defendant alleges the Commonwealth failed to present a prima facie case and did not show: (1) the Defendant acted with malice as required for both Aggravated Assault and Third Degree Murder charges, (2) did not establish Defendant's conduct caused the victim's death as required for the murder and manslaughter charges, (3) did not establish the Defendant had intent to kill as required for voluntary manslaughter and aggravated assault; and (4) failed to show that the Defendant acted recklessly or grossly negligent for purposes of involuntary manslaughter.

The burden the Commonwealth bears at the Preliminary Hearing is they must establish a prima facie case; the Commonwealth must present sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). See also Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 466 A.2d 991, 996-97 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. See Commonwealth v. Austin, 575 A.2d 141, 143 (Pa. Super. 1990).

## ***Motion to Dismiss the Charge of Third Degree Murder***

Defendant alleges that not only was there no prima facie showing of malice, there is no prima facie showing of causation for third degree murder. Defendant specifically alleges that

malice cannot be established as Defendant is substantially smaller than the victim, the victim was an active participant in the fight, and there was a lack of significant injuries to the victim's face and extremities.

To be guilty of Third Degree Murder at 18 Pa. C.S. § 2502(c), the Commonwealth must prove the victim is dead, the Defendant is the one who killed him, and the Defendant acted with malice. See also Commonwealth v. Kling, 731 A.2d 145 (Pa. Super. Ct. 1999) (malice is required for a conviction of aggravated assault and third degree murder). “Malice exists ‘where there is a wickedness of disposition, hardness of the heart, cruelty, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured.’” Commonwealth v. Fierst, 620 A.2d 1196, 1203 (Pa. Super. Ct. 1993) (quoting Commonwealth v. Reilly, 549 A.2d 503, 510 (1988)). When “malice is based on the recklessness of consequences . . . it must be shown that the defendant consciously disregarded an unjustified and extremely high risk that his actions might cause death or serious bodily harm.” Fierst, 620 A.2d at 1203. The Commonwealth must also prove the Defendant's conduct was “directly and substantially linked to the actual result as to give rise to the imposition of criminal liability.” Commonwealth v. Rementer, 598 A.2d 1300, 1305 (Pa. Super. Ct. 1991). The threshold requirement is that the Defendant's conduct “must be ‘an antecedent but for which the result in question would not have occurred.’ If the victim's death is attributable *entirely* to other facts and not at all brought about by the defendant's conduct, no casual connection exists and no criminal liability for the result can attach.” Id. (quoting 18 Pa. C.S. § 303 (a)(1)) (emphasis in original). The second part of the test is “whether the result of defendant's actions were so extraordinarily remote or attenuated that it would be unfair to hold the defendant criminally responsible.” Id.

“[I]f the wound inflicted by the accused is not itself mortal and a subsequent event is found to be the immediate cause of death, the accused does not escape legal liability if his act started an unbroken chain of causation leading to the death.” Commonwealth v. Evans, 494 A.2d 383, 389 (Pa. Super. Ct. 1985). In Evans, a sixty-eight year old man was forced into his vehicle with a sawed off shotgun to his head. He was taken to a park where they took his wallet and then released him. Id. at 385. The man died four hours later at the hospital with the cause of death due to arteriosclerotic heart disease, aggravated by the robbery and kidnapping. Id. at 389-90. The Evans Court found that the robbery and kidnapping “‘started an unbroken chain of causation’, but also was a ‘direct and substantial factor’ in bringing about the death of the victim.” Id. at 390.

The testimony of both Commonwealth witnesses is sufficient to show the Defendant acted with malice. The testimony shows the Defendant intended to harm the victim when he was punching the victim in the head. Also, the Defendant’s action in punching the victim twice in the head while he lay face down on a concrete floor shows a conscious disregard of an unjustified and extremely high risk that his actions might cause death or serious bodily harm, regardless of the lack of outward signs of injury. Therefore, the Commonwealth presented sufficient evidence on the element of malice.

The Commonwealth was also able to show the Defendant’s actions caused the victim’s death. The autopsy report states the trauma to the head and extremities of the victim were minor and not fatal. The report also lists the cause of death as hypertensive cardiovascular disease following an altercation. All witnesses testified the Defendant and victim fought and once the victim landed on the ground he never attempted to get up afterward. As decided in Evans, this Court finds the fight between the victim and the Defendant was the start of a chain of events

which were a direct and substantial factor in bringing about the death of the victim. Since the autopsy does not state the victim's death is attributable to any other factors other than the altercation, the medical evidence supports the Court's finding of an unbroken chain of events begun by the Defendant leading to the victim's death. Therefore, the Court finds the Commonwealth presented a prima facie case as to the third degree murder charge.

***Motion to Dismiss the Charge of Aggravated Assault***

Defendant asserts the aggravated assault charges against him should be dismissed for failure of the Commonwealth to present a prima facie case; specifically that the Commonwealth cannot show malice on the part of the Defendant.

A person is guilty of aggravated assault and violates 18 Pa. C.S. § 2702(a) "if he: (1) 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 . . . ." The Court will rely on the standard for malice as set forth above.

The Court finds that sufficient evidence was presented to establish a prima facie case as to the Aggravated Assault charge. As discussed above, the evidence is sufficient to show the Defendant acted with malice and intended to harm the victim by punching him in the head. Further, the Defendant's action in punching the victim twice in the head as he laid face down on the concrete floor displays a conscious disregard of an unjustified and extremely high risk that his actions might cause death or serious bodily harm. Ultimately, we know the Defendant's actions resulted in a chain reaction leading to the victim's death. Therefore, the Court finds the Commonwealth presented a prima facie case as to the Aggravated Assault charges.

### ***Motion to Dismiss the Voluntary Manslaughter Charge***

Next, Defendant alleges the evidence is insufficient to make a prima facie showing of intent as required for the charge of voluntary manslaughter.

A person commits Voluntary Manslaughter and violates 18 Pa. C.S. § 2503 (a), if he kills another individual without lawful justification and “at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by: (1) the individual killed . . .” Specific intent “may be shown by the defendant's expressed words or declarations or other conduct, such intent may be just as effectively inferred from the deliberate use of a deadly weapon upon a vital part for a manifest purpose.” Commonwealth v. Moore, 157 A.2d 65, 68 (Pa. 1959). Fists may become a deadly weapon when “repeated and continued blows [are] applied to vital and delicate parts of the body of the defenseless, unresisting victim.” Commonwealth v. Buzard, 76 A.2d 394, 396 (Pa. 1950). “Heat of passion includes emotions such as anger, rage, sudden resentment or terror, which renders the mind incapable of reason.” Commonwealth v. Ragan, 743 A.2d 390, 396-97 (Pa. 1999) (quoting Commonwealth v. Speight, 677 A.2d at 324-25 (1996)).

At the Preliminary Hearing, Kintzer testified the Defendant and the victim were arguing over a call made by the victim to Defendant’s ex-wife. The witnesses as testified, the Defendant and victim’s argument escalated to a fist fight. During the fight, the victim fell to the floor where Defendant punched him twice in the back of the head, while he laid face down and helpless on the concrete floor. As Defendant was walking away from the victim he yelled that the victim got what he deserved and “[t]hat will teach you to mess with me.” N.T. 4/3/08 p. 14-15. The Court finds the evidence presented showed the victim provoked the Defendant by remarking that he (victim) had called the Defendant’s ex-wife. The witnesses testified the argument and subsequent



fist fight began because of the victim's call to the Defendant's wife, therefore, showing the Defendant may have acted in the heat of passion. Finally, the Defendant's actions in punching the victim in the back of the head, while he laid on the concrete floor, in addition to yelling at the victim, show Defendant's intent to kill the victim. Therefore, the Court finds the Commonwealth has presented sufficient evidence for voluntary manslaughter.

***Motion to Dismiss the Involuntary Manslaughter Charge***

Defendant's final assertion is that he did not act recklessly or grossly negligent for purposes of establishing prima facie for the charge of involuntary manslaughter.

One is guilty of Involuntary Manslaughter and violates 18 Pa. C.S. § 2504(a) "when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person." Section 302 of the Pennsylvania Crimes Code defines reckless as consciously disregarding "a substantial and unjustifiable risk that the material element exists or will result from his conduct." 18 Pa.C.S. § 302(3). As also defined by the code, [n]egligent is awareness of "a substantial and unjustifiable risk that the material element exists or will result from his conduct." *Id.* at (4).

The Court finds the Commonwealth presented sufficient evidence to establish a prima facie case as to the involuntary manslaughter charge. The evidence presented at the Preliminary Hearing showed the Defendant and the victim were engaged in the unlawful act of fighting. During the fight, the victim fell to the floor where the Defendant punched him twice in the head while he laid face first on a concrete floor. The Defendant also told the victim he got what he deserved. After the blows to the head, the victim never got back up and was later declared dead.

The Court finds this evidence sufficient to show the Defendant acted recklessly or negligently, while engaged in an unlawful act. Therefore, the Court finds that the Commonwealth has presented sufficient evidence as to the involuntary manslaughter.

**ORDER**

AND NOW, this \_\_\_\_ day of December 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion for Habeas Corpus/Dismiss is hereby DENIED.

It is further ORDERED and DIRECTED that a Pre-Trial Conference in the above-captioned matter is scheduled for **January 13, 2009 at 11:00 a.m. in Courtroom No. 4, Lycoming County Courthouse, Williamsport, Pennsylvania.**

By the Court,

Nancy L. Butts, Judge

cc. DA (KO)  
PD (WM & NS)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)