

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

IN THE INTEREST OF : JV 328-2007  
: :  
T.MC : :  
: :  
A JUVENILE : Juvenile Probation

**OPINION**

The juvenile has appealed this court's disposition order of February 7, 2008. In his Concise Statement of Matters Complained of on Appeal, the juvenile avers the evidence introduced at the hearing was insufficient to sustain this court's adjudication of delinquency as to conspiracy, aggravated assault, and harassment. Specifically, the defendant alleges the evidence was insufficient to prove the juvenile was the perpetrator of these crimes.

To find an individual committed aggravated assault, 18 Pa.C.S.A. §2702(a)(1) the Commonwealth must prove he "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under the circumstances manifesting extreme indifference to the value of human life."

To find an individual committed criminal conspiracy, 18 Pa.C.S.A. §903(a)(1), the Commonwealth must prove the juvenile, with the intent of promoting or facilitating the commission of a crime, "agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime."

To find a juvenile committed harassment, the Commonwealth must prove the juvenile "strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same." The Commonwealth must also prove

the juvenile committed such acts “with intent to harass, annoy or alarm another.”

The victim, P.L, testified that he was riding his bicycle on the evening of September 25, 2007 when he saw a group of six or seven high school age boys coming out of an alley. As he approached the group, he was pedaling slowly, because he was going up a hill. One of the boys came up on his left side and punched him as hard as he could in the side of his face. Immediately afterward, all the boys jumped in and started grabbing him off his bike and punching him. P.L. fell off his bike, smashing both his feet against the bicycle. Once he was down on his side all the young men began kicking him in the back of his head and all over his body until they forced him into a fetal position on his right side. The attack lasted for five or ten minutes.

The victim positively identified the juvenile as one of the attackers. N.T. pp. 6-9. He specifically testified the juvenile struck him in the head, in the arm, and in the face, and also that the juvenile stomped on him and kicked him.

The victim sustained the following injuries: chipped teeth that need crowns, blurry vision from being kicked or punched in the eye, a neck injury, a concussion, sprained wrists, loss of hearing in his right ear, and bruising all over his body.

The court found the victim’s testimony to be highly credible. This testimony establishes the elements of aggravated assault. Whether or not the victim sustained serious bodily injury, it is certain that repeatedly striking the victim in the head and the face, as well as stomping on him and kicking him, certainly establish the juvenile was attempting to cause serious bodily injury.

Regarding conspiracy, C.M. testified that one of the members of the group made a comment as they approached the victim indicating they should hit him. While the

court found much of C.M.'s testimony to be not credible, the court did believe this statement. Moreover, the actions of the group demonstrate that there was an agreement to attack the victim, which they jointly did. And finally, the boys all ran off together, laughing and shouting insults at the victim. N.T. p. 11.

Regarding harassment, the victim's testimony established the juvenile struck him and kicked him, and that he intended to harass, annoy, or alarm him.

The court acknowledges that the juvenile presented an alibi witness, G.C., who testified she picked her son up at the juvenile's home between 8:30 p.m. and 9:00 p.m., and she glimpsed the juvenile's face at that time. N.T. pp. 121-22. The attack was estimated to have occurred at approximately 8:45 p.m. However, the court did not find G.C.'s testimony to be credible.

BY THE COURT,

Date: \_\_\_\_\_

Richard A. Gray, J.

cc: Gregory Drab, Esq.  
Jeffrey Yates, Esq.  
Juvenile Probation  
Gary Weber, Esq.