

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**RONALD RICHARDSON,
Defendant**

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**No. 1039-2011
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Habeas Corpus on September 6, 2011. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on July 29, 2011 before Magisterial District Judge Allen Page.

Background

Thomas Mark Bower, II (Bower), a prisoner at the Lycoming County Prison, testified that on January 18, 2011, he was attacked by Ronald Richardson (Defendant) in his cell in the M block of the prison. Bower testified that he was asleep in his cell when the Defendant came in and pulled him from the top bunk, where Bower fell a distance of about 4.5 feet, landing on his head on the cement floor. Once Bower was lying on the floor, the Defendant kicked him a few times before Bower rolled over on his side, at which point the Defendant proceeded to punch and kick his back. Bower knew it was the Defendant who pulled him from the bunk as he was able to see the Defendant before blacking out, and as the Defendant said to him "I told you I was gonna get you." Bower testified that in the month prior to the attack, the Defendant threatened him, stating "[I] was going to get it and that I had it coming and he kept trying to fight me throughout the rest of the time, um, the previous days on the block." N.T., 7/29/11, p. 6.

As a result of the attack, Bower suffered a 2 centimeter laceration on the back of his skull, a cut on his left eyebrow, and two (2) bruised vertebrae. Bower also suffered emotional anxiety following the attack, as he feared he would be attacked again. Bower went to the nurse at the prison where he received immediate care, and was subsequently sent to the emergency room where he required a staple for his head injury. As of the time of the Preliminary Hearing, the Defendant was still taking pain pills for his back injuries.

Following the incident, the Defendant was charged with Simple Assault, Aggravated Assault, and Assault by a Prisoner.

Discussion

In his Petition for Habeas Corpus, the Defendant contends that the charge of Aggravated Assault should be dismissed for failure of the Commonwealth to present a prima facie case. “A prima facie case consists of evidence produced by the Commonwealth which sufficiently establishes that a crime has been committed and that the accused is probably the perpetrator of that crime.” Commonwealth v. McConnell, No. 1795 C 2009, 2009 Pa. Dist. & Cnty. Sept. LEXIS 252 at 9 (Pa. Dist. & Cnty. Sept. 10, 2009) (See Commonwealth v. McBride, 595 A.2d 589, 591 (Pa.1991). “Every element of the crime charged must be supported by the evidence; however the Commonwealth need not establish guilt beyond a reasonable doubt.” McConnell at 9. (See Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995). “The Commonwealth establishes a prima facie case as long as the evidence presented establishes sufficient probable cause to warrant the belief that the accused committed the offense.” McConnell at 9. (See Lopez at 1153.)

The Defendant contends that the Commonwealth failed to show that he attempted to cause, or that he did cause serious bodily injury to Bower while possessing the requisite *mens rea*. A person commits the offense of Aggravated Assault under 18 Pa.C.S. §2702(a)(1) if that person 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. §2301 defines serious bodily injury 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. “[W]here the injury actually inflicted did not constitute serious bodily injury, the charge of aggravated assault can be supported only if the evidence supports a finding that the blow delivered was accompanied by the intent to inflict serious bodily injury. Criminal intent may be proved by direct or circumstantial evidence.” See Commonwealth v. Alexander, 383 A.2d 887 (Pa. 1978).

In support of his argument, the Defendant cites to both the Alexander case and Commonwealth v. Roche, 783 A.2d 766 (Pa. Super. 2001). In Roche, the Superior Court found the defendant’s action in punching the victim in the left eye, resulting in the victim falling to the ground unconscious, causing a scalp laceration, and requiring surgery, eight staples, and an orbital blowout requiring the attachment of a plate on the bottom eyelid, was not Aggravated Assault as the defendant lacked the required *mens rea* for the charge. In making this determination, the Roche Court cited to the fact that the defendant never specifically threatened the victim prior to the punch, did not continue to strike the victim while the victim was lying motionless on the ground, and did not possess or use a weapon or other instrumentality of harm either before or during the attack. Id. at 770. In Alexander, the Supreme Court found that the defendant’s action in walking up to the victim, punching him once in the face, and then walking

away, was insufficient, without more, to establish that the defendant intended to inflict serious bodily injury. In reaching this decision, the Alexander Court cited, among other examples, specifically to the fact that the defendant made no statements to the victim before, during, or after the attack, indicating his intent to inflict further injury upon the victim. Id. 889. However, the Alexander Court also stated that “[w]e hasten to add that a simple assault combined with other surrounding circumstances may, in a proper case, be sufficient to support a finding that an assailant attempted to inflict serious bodily injury, thereby constituting aggravated assault.” Id. at 889-890.

While the Court finds that serious bodily injury did not in fact occur, the Court disagrees with the Defendant’s contention and finds that he did in fact possess the requisite **intent** to inflict serious bodily injury on Bower. The Superior Court in Commonwealth v. Dailey, 828 A.2d 356 (Pa. Super. 2003) stated that the determination of whether an action is done with the intent to cause serious bodily harm should be determined on a case-by-case basis. The Dailey Court went on to say that “[i]t is similarly clear, however, that, depending on the other circumstances, even a single punch may be sufficient.” This Court finds that the totality of the evidence presented in this case provides the circumstantial evidence cited by the Alexander Court as needed to establish that the Defendant did in fact have the requisite intent to cause serious bodily injury to Bower, i.e., the Defendant’s multiple threats to Bower leading up to the attack, the Defendant’s actions in pulling Bower from his bunk bed, where he fell a distance of about 4.5 feet unto his head on a cement floor, an area of the body where it is commonly known that any injury can result in a life threatening situation, and the Defendant’s actions in kicking and punching Bower in the back once he was lying on the ground apparently helpless. Therefore, the Court finds that

the Commonwealth did present sufficient evidence to at least establish a prima facie case that the Defendant committed the offense of Aggravated Assault.

ORDER

AND NOW, this ____ day of September, 2011 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. Paul Petcavage, Esq.
Jeana Longo, Esq.