

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1039-2011
vs. :
:
RONALD A. RICHARDSON, :
Defendant :

OPINION AND VERDICT

Defendant was tried before this Court on November 7, 2011 and November 18, 2011. Defendant faces one count of Assault by a Prisoner, one count of Aggravated Assault and one count of Simple Assault. With the consent of the Commonwealth, Defendant waived his right to a jury trial on October 26, 2011

Thomas Bower first testified for the Commonwealth. He was incarcerated at the Lycoming County Prison on January 18, 2011 in M Block.

Shortly after breakfast, he went into his cell to lie down. His bunk was the upper bunk approximately 4 ½ feet high. Shortly prior to lunch his cellmate left the cell for an insulin shot.

While Mr. Bower was sleeping on his bunk with his face facing the wall and his back toward the edge of the bunk, he was grabbed around his torso and forcibly pulled off by the Defendant. The suddenness of the incident caused him to flail his arms and legs trying to grab on to something. As he was pulled off, he both saw the Defendant and heard the Defendant tell him: "I told you I'd get you."

The Defendant pulled Mr. Bower straight down from the bunk causing Mr.

Bower's head and back to apparently strike the concrete floor. The Defendant then began punching and kicking Mr. Bower.

During the assault, which was brief, Mr. Bower was in and out of consciousness. He recalled being balled up trying to protect himself. He recalled being punched three to four times in his right shoulder area and being kicked several times in his lower back area.

Following the assault, he saw the Defendant leave the cell. While still stunned, he made his way to the outside of the cell where he again noticed the Defendant on the bottom tier. He heard others telling the Defendant to clean up in order to avoid detection.

For approximately one month prior to the assault, Mr. Bower was having problems with the Defendant as well as others. He was threatened, called names, bullied for food and manipulated. The Defendant initiated communication with Mr. Bower in an attempt to engage him in fights. Upon Mr. Bower first entering the block, the Defendant remarked that Mr. Bower was his "bitch."

As a result of the threats and intimidation, Mr. Bower both orally and in writing requested assistance from correctional officers and their supervisors. Because the matters did not improve and were not rectified by the prison officials, Mr. Bower eventually refused to lock down in order that he would be disciplined by removing him from the block and sending him to a restricted housing unit. At the disciplinary hearing regarding such, he specifically advised the Associate Warden of why he refused to lock up and in particular the actions of the Defendant and another inmate

Upon being released from the restricted housing unit, however, Mr. Bower was returned to the same block as the Defendant. Shortly thereafter Mr. Bower was assaulted. As a result of the assault, Mr. Bower suffered a laceration on the back of his head, a laceration on his left eyebrow, a lacerated shin, bumps and scrapes and “bruising” of two vertebrae in his back.

He was eventually helped from his cell by correctional officers and taken to the nurse’s station. He was treated and eventually taken to the hospital where one staple was placed in his head to stop the bleeding. He was released back to the prison. As of the time he testified at trial, Mr. Bower claimed that he was still experiencing substantial pain in his back. He testified that he could not put his shoulders back or stand or sit up straight without experiencing substantial pain. He described his pain as “constant” and “everyday”. While he previously took Motrin or Ibuprofen to alleviate the pain, he could no longer afford such.

Mr. Bower’s demeanor was such that the Court had no trouble finding most of his testimony credible. Except with respect to his present limitations and pain, his answers were both internally consistent and logical. His testimony was consistent with the testimony of others. He made eye contact as appropriate, did not hesitate in answering questions from the Commonwealth attorney as well as the Defendant’s attorney and did not exhibit any physical signs of fabricating his story. He was not evasive, confused or misleading in his answers. He did not hesitate in answering questions nor did he exhibit any physical “tells” that would indicate that he was not being truthful. On cross-examination he performed well.

Darlene Oakes next testified on behalf of the Commonwealth. She has been

employed at the prison for 6 ½ years as a Licensed Practical Nurse. On January 18, 2011, she treated Mr. Bower

Mr. Bower informed Ms. Oakes that he was pulled out of the bed; he hit his head on the floor and was punched and hit multiple times. He complained of pain in his mid-back where he was kicked.

Upon examination, Mr. Bower had a laceration to the back of his head that was actively bleeding, a laceration above his left eyebrow area that was not actively bleeding, a golf ball size edema to the back of his head surrounding the laceration, and blood over his head and face.

In addition to his complaints of pain, he complained that he felt nauseated and dizzy. He was, however, awake, alert and oriented as to person, place and time.

Based upon her examination of Mr. Bower, Ms. Oakes decided to have him transported to the emergency room of the Williamsport Hospital in order to be further treated.

Lieutenant William H. McKissick, III next testified on behalf of the Commonwealth. He has been employed by the prison for 25 years and now is employed as a supervisor. On January 18, 2011, he responded to M Block and observed Mr. Bower in his cell bruised up, bloody and disoriented. Mr. Bower was sitting on the floor near the cell door. Upon Lieutenant McKissick asking Mr. Bower what happened, Mr. Bower immediately responded that he was pulled off of his bunk by the Defendant and repeatedly punched and kicked.

Lieutenant McKissick was vague as to receiving any prior complaints by Mr. Bower regarding any threats or bullying by the Defendant.

He did, however, conduct an investigation into the present incident which concluded that the Defendant was responsible for the assault on Mr. Bower. As part of that investigation, however, he could not recall speaking with any other witnesses and it appeared to the Court that the conclusion that the Defendant committed the assault was based primarily, if not solely, on the statements of Mr. Bower.

Sarah Horn next testified on behalf of the Commonwealth. She has been employed at the prison as a correctional officer for the past six years. She was working on January 18, 2011 passing out lunch trays. She recalls passing out lunch trays to all of the inmates on the block except for Mr. Bower. She did not see him and as a result, called for him. He staggered to the cell door on the upper tier and she saw him wobbling although she could not tell if he was bleeding. Concerned, she called central control to have a supervisor immediately address the situation.

Mr. Ronald Kuhns next testified on behalf of the Commonwealth. He has been employed at the prison for six years as a correctional officer and was working on January 18, 2011. He was summoned to M Block following the assault.

He responded to Mr. Bower's cell and saw him sitting on the floor leaning against the bunk. Mr. Bower was initially unresponsive but then complained of his back hurting. Mr. Bower's head and face were bloody and Mr. Bower was eventually escorted to the nurse's station.

At the nurse's station, Mr. Bower told Mr. Kuhns that the Defendant had drug him out of his bed and proceeded to punch and kick him.

Correctional Officer Kuhns indicated that the cell doors would have been open during the alleged assault and that the inmates had access to other inmates' cells between 9:30 a.m. and 11:50 a.m. The lunch trays were usually passed out at approximately 11:25 a.m.

Upon cross-examination, Mr. Kuhns denied that Mr. Bower ever approached him regarding any threats, intimidation or bullying by the Defendant.

Brad Shoemaker testified on behalf of the Commonwealth. He is employed as the Deputy Warden at the prison. He testified that he conducted a disciplinary hearing for Mr. Bower on January 11, 2011 because of Mr. Bower's refusal to lock down.

The refusal to lock down incident occurred on December 28, 2010. A videotape marked as Commonwealth Exhibit 4 was presented as evidence. The videotape depicted Mr. Bower's testimony at the disciplinary hearing.

Mr. Bower explained that he was being threatened and essentially strong-armed by the Defendant for food, that the Defendant wanted to fight him, and that the Defendant and others wanted Mr. Bower to go either under the bleachers or behind the stairs so as to be outside of camera range.

Mr. Bower's testimony during the disciplinary hearing was consistent with his testimony in court and consistent with his statements to others as to his prior contact with the Defendant and as to what occurred on the date of the assault.

By way of a timeline, the refusal to lock down incident occurred in late December. The disciplinary hearing was held on January 11, 2011 and Mr. Bower indicated that approximately a week prior to the refusal to lock down incident is when the strong arming by the Defendant first occurred.

The night prior to the assault following Mr. Bower serving his disciplinary lock up time, he was returned to the same block as the Defendant. Associate Warden Shoemaker could not explain why the Defendant was returned to the same block.

Admitted in evidence by the Commonwealth were Exhibits 1, 2 and 3 depicting the injuries that Mr. Bower sustained as a result of the assault.

The defense first called Detective William Weber to testify. Detective Weber was working as a detective for the Lycoming County District Attorney's office and investigated this case. He interviewed Mr. Bower one time at Camp Hill prior to the filing of charges and re-interviewed Mr. Bower again at SCI Graterford following the filing of the charges. Detective Weber indicated that Mr. Bower's version of the events was consistent at Camp Hill, at Graterford and when he testified earlier in this trial.

He conceded, however, that he never spoke with the Defendant and never obtained any statements from other inmates.

Fitzgerald Robinson next testified on behalf of the Defendant. He is presently an inmate at the Lycoming County Prison and was Mr. Bower's cellmate on January 18, 2011. He indicated that Mr. Bower was generally considered to be a strange individual who would jump around the cell, jumping from his bunk or jumping from a desk and on to the

bunk.

On the date in question, he had left the cell to get his insulin shot and went off the block. He came back to the block and returned to his cell at which time he saw Mr. Bower sitting at his desk. He then went to the bottom tier to get his lunch tray. He heard a loud bang and looked up at the cell.

He saw the Defendant walk down the upper tier, look into the cell of Mr. Bower and then come out. He saw others do the same thing including the block worker, who “laughed” when he came out of the cell.

Contrary to what Correctional Officer Horn testified to, Mr. Robinson claimed that when she called Mr. Bower’s name, he came out of the cell, she asked whether he was eating, he said something smart to her and then walked back in.

Mr. Bower was then recalled by the Defendant. He admitted to having a prior retail theft conviction but maintained that his version of events was accurate.

Defendant then testified on his own behalf. He confirmed that he was an inmate at the prison on January 18, 2011. He indicated that he was sleeping and then heard a loud thump like a body fell. He indicated that it “kind of woke him up”. He was standing on the tier and then started to walk down toward the steps where Mr. Bower’s cell was located. He looked into the cell and saw Mr. Bower “laying in a pool of blood.”

While he did not get along with Mr. Bower, he was concerned for Mr. Bower and asked if he was alright or “cool.” In response, Mr. Bower directed foul language and racial slurs toward the Defendant. The Defendant was disgusted and walked out of the cell.

The Defendant then walked down the stairs to get his lunch tray. He saw others walk in and out of Mr. Bower's cell including the block runner. He saw an interaction between the correctional officer handing out the trays and Mr. Bower.

Other correctional officers responded to the block and Lieutenant McKissick, apparently upon seeing Mr. Bower, ordered a lock down of the block.

Later that day, Lieutenant McKissick came to his cell and told the Defendant to "cuff up". The Defendant did not know what Lieutenant McKissick was talking about and denied doing anything to Mr. Bower.

Defendant maintained on the stand that he never assaulted Mr. Bower, that he denied such at his disciplinary hearing and that he was given 90 days "in the hole" for something he didn't do. He claimed that there was no proof that he did it and that the block cameras would prove such.

On cross-examination, he admitted that he did not like Mr. Bower and used to make fun of him.

Defendant testified that during his disciplinary hearing, Associate Warden Shoemaker turned off the videotape and had a conversation with him regarding the incident. More specifically, he claims that Mr. Shoemaker said to him that if he didn't do it, who did.

On rebuttal, the Commonwealth called Mr. Shoemaker back to the stand. Mr. Shoemaker denied turning the tape off or asking the Defendant any questions "off the record."

On November 18, 2011, the Commonwealth presented the medical records of the Williamsport Hospital where Mr. Bower was treated. The medical records were admitted for a limited purpose and confirmed the fact of Mr. Bower's complaints and treatment.

In closing, Defendant argued that the evidence was insufficient to prove that he pulled Mr. Bower off the bed or assaulted him. Alternatively, Defendant argued that if he did commit the assault, the evidence is not enough to convict him of assault by a prisoner or aggravated assault.

The Commonwealth countered that the evidence was overwhelming, that the Defendant committed the assault and that there was evidence beyond a reasonable doubt for a conviction on all of the charges.

While the Defendant testified in a fairly convincing manner, the Court does not hesitate in concluding that the Defendant committed the assault against Mr. Bower. As referenced previously, the testimony of Mr. Bower regarding the assault was credible and convincing. He had the opportunity to observe who was assaulting him and was consistent throughout in his assertions of what occurred. While the Court is troubled by what appears to be the lack of a thorough investigation by prison officials (i.e., witness statements, photographs of the cell, review of block video, inmate request slips), the testimony of Mr. Bower suffices to meet the Commonwealth's burden.

Moreover, the testimony of Mr. Robinson on behalf of the Defendant can best be described as lacking reason or understanding. The suggestion that Mr. Bower somehow

caused his own injuries is incredible. Furthermore, the testimony of both Mr. Robinson and the Defendant as to the interaction between Mr. Bower and Correctional Officer Horn was contradicted by the credible testimony of Correctional Officer Horn.

The Commonwealth has clearly satisfied its burden of proof with respect to Count 3, Simple Assault.

Whether the Commonwealth has sustained its burden with respect to count 2, Aggravated Assault, and Count 1, Assault by a Prisoner, is a closer question.

As the Honorable Nancy L. Butts cogently noted in her Opinion and Order of September 28, 2011, 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 an extreme indifference to the value of human life.

Serious bodily injury is defined as “[b]odily 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.

The Court finds that the Commonwealth has failed to prove that the Defendant caused serious bodily injury to Mr. Bower. Where serious bodily injury is not found, there must be evidence that the Defendant intended to inflict serious bodily injury on the victim.

In determining whether the evidence establishes intent to cause serious bodily injury, the factfinder must consider all of the surrounding circumstances, taking into

consideration both direct and circumstantial evidence, and is free to conclude that the accused intended the natural and probable consequences of his actions to result therefrom. Commonwealth v. Bruce, 916 A.2d 657 (Pa. Super. 2007), appeal denied, 593 Pa. 754, 932 A.2d 74 (2008).

An “attempt” is found where the accused, with the required specific intent, acted in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another. Commonwealth v. Gray, 867 A.2d 560 (Pa. Super. 2005), appeal denied, 583 Pa. 694, 879 A.2d 781 (2006).

The Court cannot conclude that the Defendant took substantial steps, of such a nature that there is no reasonable doubt that it was his conscious object or purpose to cause a life-threatening injury to Mr. Bower. From the evidence, it appears that the assault was brief. There was no evidence that the Defendant ever threatened to cause death or serious bodily injury to Mr. Bower. There were no statements made during the assault which would indicate an intent, beyond a reasonable doubt, that the Defendant wanted to cause serious bodily injury to Mr. Bower. The punches (three to four) were quick and on Mr. Bower’s right shoulder area. The kicks (several) were also quick and in the lower back area. Their force was such that there were no abrasions, lacerations or visible bruising to Defendant’s back.

Moreover, the Court does not find Mr. Bower’s testimony regarding the injuries to his back to be entirely credible. He testified that he needed to slouch over and could not sit straight or stand straight without pain. The Court, however, had the opportunity to observe Mr. Bower for at least ten minutes prior to the trial beginning and upon being

called to testify. He was escorted into the courtroom in handcuffs and shackles. He was seated on a wooden bench where he sat for approximately ten minutes. He engaged some of the court personnel in conversation and during the entire ten minutes he appeared to the Court to have no trouble whatsoever sitting straight or to be suffering from any pain or discomfort. He smiled, laughed and at no time made any complaints of pain or exhibited any facial gestures which the Court would interpret as evidencing pain. As well he was walked in again to testify a second time. When he was brought into the courtroom, he walked straight and appeared to have no pain whatsoever.

While being pulled off the bed, the result was that Mr. Bower apparently struck his head on the concrete floor perhaps prior to striking any other part of his body. His testimony evidenced the fact that he was pulled from his waist area. There is no evidence to indicate that Mr. Bower was grabbed in his upper torso area or around his head or neck area such as the Court could conclude beyond a reasonable doubt that it was the Defendant's intent that Mr. Bower's head first strike the concrete.

Moreover, there does not appear to be evidence that the force of Mr. Bower's striking of the concrete was substantial. It caused a laceration to the head that required one staple to fix. There was edema surrounding the laceration. There was no subdural hematoma, fractured skull or significant lacerations or bruising. The Defendant was never diagnosed with a concussion nor was he treated for a concussion.

Accordingly, the Court will find the Defendant not guilty with respect to count two, Aggravated Assault.

To convict the Defendant of Assault by Prisoner in violation of 18 Pa. C.S.A. §2703, among other elements which have obviously been proven beyond a reasonable doubt, the Commonwealth must prove that the Defendant committed an assault upon Mr. Bower by any means or force likely to produce serious bodily injury. The issue is different that whether the defendant intended to inflict serious bodily injury. The issue is rather, was the force used likely to produce serious bodily injury.

The Court finds beyond a reasonable doubt that the Defendant pulled the victim off the bed with the requisite amount of force likely to produce serious bodily injury. The Defendant clearly approached the victim while the victim was either sleeping or unaware of the Defendant's presence. He then grabbed the victim around the victim's torso and jerked him off of the top bunk, 4 ½ feet above the concrete floor. Mr. Bower flailed away in vain to prevent the assault. The force used actually pulled Mr. Bower entirely off the bunk, casting him in the air and down onto the concrete floor. While the Court cannot conclude beyond a reasonable doubt that the Defendant intended to cause serious bodily injury, the force used in pulling Mr. Bower suddenly off of the bed and onto the floor was likely to produce serious bodily injury.

Accordingly, the Court will find the Defendant guilty with respect to Count 1, Assault by a Prisoner.

VERDICT

AND NOW, this ____ day of November 2011, following a non-jury trial, the Court adjudicates the Defendant as follows:

Count 1, Assault by Prisoner (felony two) – **GUILTY**

Count 2, Aggravated Assault (felony one) – **NOT GUILTY**

Count 3, Simple Assault (misdemeanor two) – **GUILTY**

Sentencing is scheduled for **February 1, 2012 at 2:30 p.m. in Courtroom No. 4** of the Lycoming County Courthouse. In preparation for sentencing, the Pennsylvania Board of Probation and Parole is directed to prepare a Pre-Sentence Report. The Lycoming County Prison shall also provide an Inmate Conduct Report to the Court prior to sentencing.

By The Court,

Marc F. Lovecchio, Judge

cc: CA
DA (PP)
PD (JL)
APO
Prison
PA Board of Probation & Parole
Gary Weber, Esquire (Lycoming Reporter)
Work File