

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-200-2014**
v. :
 :
GREGORY OSBORNE, : **CRIMINAL DIVISION**
Defendant :

OPINION AND ORDER

On March 18, 2014, the Defendant filed a Petition for Writ of Habeas Corpus. A hearing on the petition was held on July 14, 2014.

I. Background

During the preliminary hearing, Jacob Dincher (Dincher) testified to the following:

Dincher began drinking alcohol at 11:30 P.M. on September 7, 2013. A friend of Dincher used Dincher's car to drive him to an apartment belonging to Dincher's acquaintance. On September 8, 2013, around 1:45 A.M., Dincher's car was parked near the apartment and Dincher entered apartment, which is on the second floor of a building. Dincher was intoxicated when he entered the apartment. Shortly after entering apartment, Dincher fell asleep on a couch. Around 2:30 A.M., Dincher was woken up by the Defendant, Gregory Osborne. The Defendant told Dincher to move to the floor because the Defendant and a friend of the Defendant wanted to sit on the couch. "Words were exchanged" between the Defendant and Dincher, but Dincher did not get off the couch. While Dincher was still on the couch, the Defendant punched him above the right eye. The Defendant then pulled Dincher off the couch.

A few minutes after he was pulled off the couch, Dincher stumbled towards the apartment's kitchen, which was next to area with the couch. As he reached the doorway to the kitchen, the Defendant again punched him in the face. Dincher fell into a corner and lost consciousness. When he regained consciousness, he heard the voices of the Defendant and the Defendant's friend. The Defendant said, "Who's riding for him [Dincher]?" Dincher also heard a "little scuffle" involving the Defendant and Dincher's friend. Dincher's friend then went into the kitchen and slung Dincher over his shoulder. Dincher's friend helped Dincher go down the apartment stairs and get to the building's door. The Defendant and the Defendant's friend "kind of pushed" Dincher out of the building. Once Dincher was outside, he lost track of the friend who helped him down the stairs. Dincher tried to call the friend but realized his phone was dead. Dincher went to his car to charge his phone. When Dincher started to use his phone, a police officer pulled up to him and called an ambulance. An ambulance took Dincher to hospital.

At the hospital, it was determined that the bone around Dincher's right eye was fractured. It was also determined that Dincher had a concussion. Dincher had scratches all over his body and bruises on his back. He was instructed to use eye drops for a week,

and during that time he could not see well out of his right eye. More than four months after the alleged assault, Dincher was still having occasional headaches, which he did not have before the assault. Finally, since the alleged assault, Dincher has noticed a difference in his vision when he drives at night.

The Clinical Report of nurses at the hospital indicates that the Defendant had facial swelling around the right eye. It also indicates that the Defendant had a blood alcohol concentration of 0.357% at around 7:00 A.M. on September 8, 2013. The report also indicates that the Defendant had used marijuana not long before being admitted into the hospital.

During the preliminary hearing, Williamsport Bureau of Police Corporal Jeffrey Paulhamus (Paulhamus) testified that Dincher came to police headquarters around 6:00 P.M. on September 8, 2013. At that time, Dincher's right eye was nearly swollen shut and his eyeball had bleeding in it. Dincher also had a small laceration on his nose. Paulhamus testified that he talked with Dincher's acquaintance who resides in the apartment where the alleged assault occurred. The acquaintance told Paulhamus that Dincher had gotten beaten up in the apartment.

The Defendant was charged with Simple Assault.¹ In his Petition, the Defendant argues that the evidence produced at the preliminary hearing was insufficient to prove any elements of Simple Assault. Specifically, the Defendant argues that Dincher could not have remembered what happened in the apartment because he used drugs shortly before the entering the apartment and had a blood alcohol content of 0.357% a few hours after the alleged assault.

II. Discussion

“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. In other words, the prima facie case in support of [the defendant's] guilt consists of evidence presented by the Commonwealth that, ‘if accepted as true, would

¹ 18 Pa.C.S. § 2701(a)(1).

warrant the trial judge to allow the case to go to the jury.’ Each element of the criminal offense charged must be supported by the Commonwealth’s evidence.” Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995) (citations omitted).

“[A] person is guilty of assault if he . . . attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another.” 18 Pa.C.S. § 2701(a)(1). Bodily injury is “impairment of physical condition or substantial pain.” 18 Pa.C.S. § 2301. “[I]ntent may be established by circumstantial evidence since there is rarely any direct evidence of one’s subjective state of mind.” Commonwealth v. Utter, 421 A.2d 339, 341 (Pa. Super. 1980).

Here, the Commonwealth has presented evidence to support both the element of bodily injury and the element that the Defendant intentionally caused the bodily injury. For the bodily injury element, Dincher testified that the bone around his right eye was fractured. Dincher testified that he had a concussion, scratches all over his body, and bruises on his back. He was instructed to use eye drops for a week, and during that time he could not see well out of his right eye. More than four months after the alleged assault, Dincher was still having occasional headaches, which he did not have before the alleged assault. Since the alleged assault, Dincher has noticed a difference in his vision when he drives at night. Paulhamus testified that when he saw Dincher on September 8, 2013, Dincher’s right eye was nearly swollen shut.

For the element that the Defendant intentionally caused the bodily injury, Dincher testified that “words were exchanged” between him and the Defendant shortly before the Defendant punched him. This shows that the Defendant was annoyed with Dincher shortly before he allegedly punched Dincher. Dincher also testified that after punches the Defendant said, “Who’s riding for him [Dincher]?” In addition, Dincher testified that the Defendant and Dincher’s friend had a “little scuffle.” The Defendant’s question and the scuffle show that

shortly after the alleged punches, the Defendant was annoyed with the Defendant and individuals associated with the Defendant. Finally, Dincher testified that he was punched twice in the face. The number of punches and the location of the punches is further evidence of the Defendant's intent to injure Dincher.

The Defendant argues that Dincher could not have remembered what happened in the apartment because of his blood alcohol content and drug use. “[I]ntoxication on the part of a witness at the time of an occurrence about which he has testified is a proper matter for the jury’s consideration as affecting his credibility.” Commonwealth v. Drew, 459 A.2d 318, 321 (Pa. 1983). The finder of fact will be tasked with determining whether the Defendant could remember what happened in the apartment. This Court will not hold as a matter of law that a witness cannot remember an event when his or her blood alcohol concentration is 0.357% a few hours after the event.

III. Conclusion

A prima facie case has been established as the Commonwealth has provided evidence to support the elements of Simple Assault.

ORDER

AND NOW, this _____ day of August, 2014, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge