IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA: 98-10,736

VS :

DAVID A. SEWARD :

OPINION IS SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court=s decision dated December 29, 1998 in which the Defendant was found guilty of aggravated assault, simple assault, resisting arrest, disorderly conduct and harassment following a non-jury trial. Also pursuant to that Order, the Defendant was sentenced to undergo incarceration in the Lycoming Couinty Prison for a minimum of nine (9) months and a maximum of twenty-three (23) months. In his Statement of matters Complained of on Appeal dated January 28, 1999, the Defendant alleges that the evidence was insufficient to prove aggravated and simple assault, as the Commonwealth neither proved that the victim (Parole Officer Ed McCoy) sustained bodily injury, nor that the Defendant possessed the specific intent to cause bodily injury.

The evidence presented at the trial is as follows: Edward McCoy, (McCoy) a probation officer with the Lycoming County Adult Probation Office, testified that on April 2, 1998, at approximately 3:00 p.m., he was riding along with another probation officer in the vicinity of Little League Boulevard and Hepburn Street when he noticed the Defendant, an individual under his supervision, walking north along Hepburn Street. He testified that he got out of the car and told the other officer to turn the car around because he wanted to talk with the Defendant. (N.T. 12/29/98, p. 17). He testified that he wanted to talk with him because he Awas transferred to Philadelphia approximately a month prior and I wanted to

know why he was in Williamsport.@ (Ibid.)

When McCoy approached the Defendant, he indicated that he was in town visiting his children. McCoy then requested that the Defendant turn around so that he could pat search him. (Id., p.18). The Defendant turned around and raised his hands, but McCoy testified that once he placed his hands on the Defendant, Ahe swung around hitting me in the facial area.@ (Id., p.18-19). On cross examination, McCoy testified that he did not have a specific recollection of the Defendant=s hands forming a fist as he swung back (Id., p.26). The Defendant=s hand hit the right side of McCoy=s face. McCoy testified that once he was struck, the Defendant Astarted to run. I grabbed his jacket, pulled him back and was struggling with him, had him in a headlock. We struggled for a while. He slipped away. I fell to the ground. Mr. Seward then ran south on Hepburn Street across Hepburn Street to the Genetti parking lot.@ (Id., p.20). McCoy pursued the Defendant on foot while the other agent followed the Defendant in his vehicle, then he stopped his pursuit and ran into City Hall to get assistance. He testified that at that point he could feel that his lip was swollen or bleeding, however, he did not seek medical attention.

McCoy testified that through the Williamsport Bureau of Police, they learned of two possible locations where the Defendant may have gone. McCoy and Adult Probation Officers Jeffrey Whiteman, (Whiteman), and Scott Metzger, (Metzger) were assisted by Officers Helm and Womer of the Williamsport Bureau of Police in investigating the locations. At one of the locations, the Defendant was seen trying to escape out a back entrance as the agents approached the front door. (Id., p.24). Whiteman testified that he and Officer Womer were at the rear of the residence when the Defendant exited the home

onto the second floor porch. He testified that when the Defendant saw him and Officer Womer, he returned back into the residence. (Id. p. 31).

McCoy testified that after learning that the Defendant was on the second floor, Officer Helm instructed the Defendant to come down from the upstairs. Before he came down the stairs, the Defendant released pitbulls from the upstairs, and they came charging down the steps onto the first floor. (Id., p. 33). McCoy testified that Afortunately, the dogs came down and did not attack. And at that point, Mr. Seward came to the top of the stairs with his hands up.@ (Ibid.) The Defendant was then handcuffed.

The Defendant first argues that the evidence was insufficient to prove the offenses of simple or aggravated assault, as the Commonwealth did not establish that the Parole Officer sustained bodily injury. Under 18 Pa.C.S.A. ' 2701, a person is guilty of simple assault if he Aattempts to cause or intentionally, knowingly or recklessly causes bodily injury to another.@ Bodily injury is defined by 18 Pa.C.S.A. ' 2301 as Aimpairment of physical condition or substantial pain.@ The Commonwealth need not establish that the victim actually suffered bodily injury; rather, it is sufficient to support a conviction if the Commonwealth establishes an attempt to inflict bodily injury. The intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury. Commonwealth v. Richardson, 431 Pa. Super. 496, 636 A.2d 1195 (1994), *citing* Commonwealth v. Polston, 420 Pa. Super. 233, 616 A.2d 669 (1992), *alloc.den.,* 534 Pa. 638, 626 A.2d 1157 (1993). Instantly, the Commonwealth established that the Defendant, knowing that McCoy was directly behind him, swung his arms around at head level, striking McCoy in the face. McCoy testified that he felt as though his lip was swollen or bleeding.

He also testified that he continued to struggle with the Defendant and fell onto the ground when the Defendant slipped away from his grasp. The Court would find that this evidence establishes that the Defendant actually caused bodily injury to McCoy. *See* *Commonwealth* *v.* *Richardson*, *supra*.

Even if it were found that the Defendant did not actually cause bodily injury, the Court would find that the Defendant *attempted* to cause bodily injury. AA person acts intentionally with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result.@ 18 Pa.C.S.A. ' 302(b)(1). The Defendant argues that because he did not make a fist and aim directly at McCoy=s face, his actions cannot be considered intentional. The Court finds this argument to be without merit. Instantly, the Defendant knew that McCoy was going to do a pat search of his clothing, and he knew that McCoy was standing directly behind him. The Defendant, with his arms raised at head level, swung around and made contact with McCoy=s face. After striking McCoy, the Defendant continued to struggle with him, slipped from his grasp, knocked him down, and ran. The Court would find under the circumstances of this case that the Defendant intended to strike and cause bodily injury to McCoy.

The Defendant next alleges that there was insufficient evidence to establish the elements of aggravated assault. Under 18 Pa.C.S.A. ' 2702(a)(3) a person is guilty of aggravated assault if he Aattempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection

(c), in the performance of duty.@ County Adult Probation or Parole Officers are enumerated in subsection (c) of the statute. The Court has previously found that the Defendant caused bodily injury or at least attempted to cause bodily injury to McCoy. Further, McCoy was in the performance of his duties when the offense occurred. The Court therefore finds that the Commonwealth established the elements of aggravated assault beyond a reasonable doubt.

The Defendant has argued that this type of behavior does not seem consistent with the offense of aggravated assault. *See* *Commonwealth v. Wertelet*, 696 A.2d 206 (1997). The Court finds the Wertelet decision distinguishable from the case at bar. In Wertelet, police officers were called to the scene when the defendant, a property owner, became disruptive when a utility company came onto her property to bury lines. The defendant told the workers and the officers that they were trespassing, and ordered them off the property. When the workers refused, the defendant grabbed a garden rake and began filling in the hole that the workers had dug. The officer interceded at that point and tried to take the rake from her hands, but the defendant refused to give it up. When the officer attempted to place her under arrest, the defendant struggled and kicked one of the officers in the shin area twice. The defendant was charged with aggravated assault, simple assault, resisting arrest, and disorderly conduct. The defendant, in Wertelet, was ultimately found guilty of resisting arrest and aggravated assault. On appeal, the defendant argued that the evidence was insufficient to sustain a conviction of aggravated assault, because the officer did not sustain Abodily injury@ as defined by the Crimes Code. The court found that Aalthough there was undoubtedly an intent on the part of the legislature to provide police

officers who are performing their duties greater protection under the statute than a layperson, it does not follow that the elimination of the qualifier ›serious= from the serious bodily injury element was meant to depreciate the severity of the offense to a point where it encompasses relatively harmless physical contact with a police officer. Rather, logic and reason suggest that such conduct was meant to be dealt with under the resisting arrest, harassment and *possibly simple assault offenses.@* Wertelet 696 A.2d at 212 (emphasis added). In Wertelet, the defendant=s actions were not even found to have been sufficient to have satisfied the elements for simple assault. Instantly, this Court finds that if a defendant=s actions are found to be sufficient to establish the offense of simple assault, and the actions have been committed against an officer enumerated under 18 Pa.C.S.A.' 2702(c), the actions must be sufficient to established aggravated assault under 18 Pa.C.S.A.' 2702(a)(3) which has the same elements. The Court therefore rejects the Defendant=s argument, and affirms its judgement of sentence.

Dated:

By The Court,

Nancy L. Butts, Judge