

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 01-10,729

VS :

SHANE A. POLCYN :

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus. Defendant has been charged with aggravated assault, simple assault, harassment and disorderly conduct as a result of an incident that occurred April 9, 2001. After the preliminary hearing before District Magistrate C. Roger McRae, all of the charges were bound over. Defendant now argues that the Commonwealth failed to establish a prima facie case of aggravated assault, as they failed to prove that the Defendant attempted to cause serious bodily injury. After a review of the testimony from the preliminary hearing, the Court finds the following facts relevant to the motion.

James Polcyn testified that on April 9, 2001, while standing on the porch of his home, he asked the Defendant, his son, to take his belongings and leave his home. Polcyn testified that he had asked the Defendant to leave primarily because of his drug and alcohol abuse. (N.T. 4/19/01, p. 3) The Defendant, who had been drinking heavily that day, followed Polcyn into the house, requesting to be able to stay. At some point, Polcyn smacked the Defendant, and asked him if he realized what he was doing. In response, the Defendant shoved Polcyn backwards into a computer, and Polcyn fell onto the floor. While on the floor, the Defendant kicked and beat Polcyn numerous

times in the rib, back, and shoulder areas.¹ The Defendant then pushed Polcyn's head through a window in the kitchen door.² (Id., p 4) Polcyn suffered a large cut to his head, numerous bruises, and two black eyes. (Id., p 5) Polcyn testified that the Defendant only stopped after hearing police sirens nearing the scene.³

The Defense argues that the Commonwealth's evidence did not establish a prima facie case of the charges of aggravated assault against James Polcyn, as they failed to establish that he attempted to cause serious bodily injury. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability that the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). In order to establish a prima facie case of aggravated assault under 18 Pa. C.S.A. §2701, the Commonwealth must show that the Defendant attempted to, or caused serious bodily injury to Polcyn, intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. To prove aggravated assault based upon an attempt, the Commonwealth "must show that the accused acted with specific intent to inflict serious bodily injury." Commonwealth v. Rodriguez, 449 Pa.Super. 319, 673 A.2d 692, (1996), *citing*, Commonwealth v. Sanders, 426 Pa.Super. 362, 627 A.2d 183 (1993). The intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury. Commonwealth v. Richardson, 431 Pa. Super.

¹ The Defendant testified that he believed he only hit Polcyn approximately five times, and kicked him five times, but admitted that because of the amount of alcohol he had consumed, he could not recall how many times he hit him. He also could not recall what he told police officers shortly after the incident.

² The Defendant denied putting Polcyn's head through the glass on the door. (Id., p 12) He stated that the glass broke when Polcyn backed into the door.

³ The police were summoned by a concerned neighbor who heard Polcyn screaming and heard glass breaking.

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).

In the instant case, the Court finds that the Defendant's acts of punching Polcyn in the face giving him two black eyes, repeatedly kicking and hitting him in the torso area while he lay on the ground, and putting his head through a glass window, stopping only upon hearing police approaching, is sufficient evidence that the Defendant acted with specific intent to inflict serious bodily injury, thereby establishing a prima facie case of aggravated assault. See Rodriguez, supra, (court held that jury could infer intent to inflict serious bodily injury from evidence that the defendant and his confederates punched and kicked a lone victim while the victim was on the ground, stopping only when a police officer arrived.), *citing* Commonwealth v. Glover, 303 Pa. Super. 229, 449 A.2d 662 (1982), *aff'd* 500 Pa. 524, 458 A.2d 935 (1983) (jury could infer intent to inflict serious bodily injury from evidence that appellant repeatedly kicked the victim, hit him in the head with his fists, and acted not alone, but with two other men). The Court therefore rejects Defendant's argument, and denies the motion to dismiss.

ORDER

AND NOW, this _____ day of July 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Habeas Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA

James Cleland, Jr., Esquire
Diane Turner, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire