

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DUSTIN PAUL BAILEY

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1078 MDA 2013

Appeal from the Judgment of Sentence January 30, 2013
In the Court of Common Pleas of Franklin County
Criminal Division at No(s): CP-28-CR-0001077-2011

BEFORE: ALLEN, J., LAZARUS, J., and FITZGERALD, J.*

MEMORANDUM BY LAZARUS, J.

FILED APRIL 14, 2014

Dustin Paul Bailey appeals from the judgment of sentence entered in the Court of Common Pleas of Franklin County. We affirm based on the opinions authored by the Honorable Carol L. Van Horn.

Bailey was charged with aggravated assault¹ and simple assault² following an altercation where Bailey slammed the victim into a toilet, with enough force to break the toilet, and punched the victim at least ten times. The victim suffered fractures in his orbital bone, broken teeth, and torn

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 2702.

² 18 Pa.C.S.A. § 2701 (a)(1).

muscles in his back. As a result of the altercation, the victim was out of work for five months.

Prior to the date set for trial, defense counsel filed a motion *in limine* to preclude the Commonwealth's introduction of evidence of Bailey's alleged use of steroids. The Commonwealth filed a response. The Honorable Richard J. Walsh denied Bailey's motion.³

Jury selection occurred on December 10, 2012, before Judge Van Horn. At that time, both the Commonwealth and the defense accepted Ms. Van Pelt as a juror.

The jury trial⁴ took place before Judge Walsh the following two days, December 11 and 12. On the morning of the first day of trial, juror Van Pelt came forward and relayed that she thought she might have independent knowledge of the case, despite the fact that she did not respond affirmatively to the question during jury selection.

Judge Walsh questioned Van Pelt in chambers, along with defense counsel and the prosecutor. The juror stated:

I'm not sure if I have the right case and I should have thought of it yesterday. The more I started looking at the name, I think a

³ Judge Walsh's order provided that "[t]he prosecution's use of such evidence shall be solely to establish motive, and may not be used to 'blacken' the character of the defendant." **See** Order, 12/10/2012.

⁴ The court consolidated trial in this case, 1077-2011, with the simple assault case of **Commonwealth v. Billy Jo Bailey**, 1087-2011. **See** Order, 5/4/2012.

lady from my church might have mentioned something about this to me. It would have been her great nephew's father. She said he might be going to jail for assault this week and that he was not a very good role model. And it had to do with a man was down unconscious [sic] and he came and hit him with a toilet. I'm not sure if this is the same person or not but I thought I better tell somebody, and I am very nervous right now.

N.T. Trial, 12/11/12, at 6.

Judge Walsh questioned the juror further, and juror Van Pelt stated that this information would not affect her ability to be a fair and impartial juror. Defense counsel motioned to strike Van Pelt for cause.⁵ Judge Walsh denied the motion.

Following trial, the jury convicted Bailey of all charges. Judge Van Horn sentenced Bailey to six to twelve years' imprisonment. Bailey filed post-sentence motions, which Judge Van Horn denied. **See** Opinion and Order, 5/23/2013. Bailey filed this appeal, and he raises the following issues for our review:

1. Whether the court erred in not striking a jury member when it re-examined a juror who had knowledge about the appellant on the day of trial but did not come forward about that knowledge during jury selection and appellant's counsel requested she be struck with no objections from the Commonwealth or co-defendant's counsel?

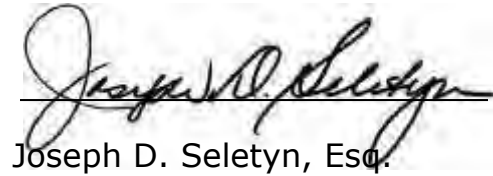
⁵ Pennsylvania Rule of Criminal Procedure 631(E)(1)(b) states that "a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 641." Pa.R.Crim.P. 631(E)(1)(b).

2. Whether the trial court erred in denying the appellant's motion *in limine*?
3. Whether the court erred in denying the appellant's motion to dismiss where the Commonwealth failed to prove beyond a reasonable doubt that the appellant threatened to cause or attempted to cause serious bodily injury or death as to 18 Pa.C.S. § 2702(a)(1), as the Commonwealth presented insufficient evidence at trial to prove the Appellant caused serious bodily injury or attempted to cause serious bodily injury?
4. Whether the court erred in not having a hearing when the motion *in limine* was filed but rather made a ruling based solely on the motions and where the court did not make a ruling on the record?
5. Whether the Commonwealth failed to prove beyond a reasonable doubt that the Appellant committed aggravated assault under 18 Pa.C.S. § 2702(a)(1) where the Commonwealth presented insufficient evidence at trial to allow the jury to find the appellant to have caused serious bodily injury or attempted to cause serious bodily injury and 18 Pa.C.S. § 2701(a)(1) simple assault causing bodily injury when the appellant was justified in protecting another person.

After careful review of the parties' briefs, the record and the relevant law, we agree with Judge Van Horn's thorough analysis and affirm Bailey's judgment of sentence on the basis of her opinion denying post-sentence motions, **see** Trial Court Opinion, 5/23/2013, and her Pa.R.A.P. 1925(a) opinion filed on July 22, 2013. We instruct the parties to attach copies of Judge Van Horn's decisions in the event of further proceedings.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/14/2014

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL
DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH

Commonwealth of Pennsylvania,

v.

Dustin Bailey,

Defendant

:
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:
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Criminal Action

No. 1077-2011

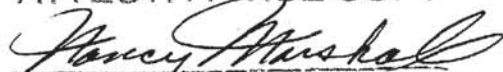
Honorable Carol L. Van Horn

OPINION *sur* Pa.R.A.P: 1925(a) AND ORDER OF COURT

Before Van Horn, J.

JUL 22 2013

ATTEST: A TRUE COPY


Nancy Marshall
Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL
DISTRICT OF PENNSYLVANIA - FRANKLIN COUNTY BRANCH**

Commonwealth of Pennsylvania,	:	Criminal Action
	:	
v.	:	No. 1077-2011
	:	
Dustin Bailey,	:	
Defendant	:	Honorable Carol L. Van Horn

STATEMENT OF THE CASE

The above-captioned Defendant was charged with Aggravated Assault¹ and Simple Assault² and waived formal arraignment on July 27, 2011. After a series of continuances, the Defendant's trial was set for December 11-12, 2012³. Defendant filed a Motion in Limine to preclude the use of evidence of his alleged steroid use on November 30, 2012 and the Commonwealth filed its Answer on December 7, 2012. The Honorable Richard J. Walsh denied the Defendant's Motion on December 10, 2012. The Defendant's trial was held as scheduled and the jury returned a verdict of guilty on all charges on December 12, 2012. Judge Walsh subsequently retired, requiring Defendant's case to be reassigned to this Court. On January 30, 2013, this Court sentenced the Defendant to a period of incarceration of six to twelve years.

The Defendant filed a Post-Sentence Motion on February 8, 2013, which included a Motion for New Trial re: Denial of Motion to Strike, a Motion for New Trial re: Denial of Motion in Limine, a Motion for Bail, a Motion for Juvenile Records, and a Motion for Leave to Amend. On March 4, 2013, the Commonwealth filed its Answer to the Defendant's Post-Sentence Motion. By Order of Court dated March 25, 2013, this Court granted the Defendant's Motion for Juvenile Records and permitted Defendant to make an amendment to the Post-

¹ 18 Pa.C.S.A. §2702(a)(1).

² 18 Pa.C.S.A. §2701(a)(1).

³ The Defendant's trial was consolidated with that of Billy Jo Bailey, case number 1087-2011.

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Sentence Motion, as necessary. At the April 1, 2013 hearing on the Defendant's Post-Sentence Motion, Defendant withdrew his Motion for Leave to Amend, as he determined after a review of his juvenile records that such an amendment would be unnecessary. The Court then heard argument on the three outstanding Motions contained in Defendant's Post-Sentence Motion. On May 23, 2013, this Court denied Defendant's Motion for New Trial re: Denial of Motion to Strike, Motion for New Trial re: Denial of Motion in Limine, and Motion for Bail.

Defendant filed his Notice of Appeal June 14, 2013. Pursuant to this Court's Order dated June 19, 2013, Defendant filed his Concise Statement of Matters Complained of on Appeal ("Statement") on July 9, 2013. In his Statement, Defendant raises five issues on appeal:

- 1) "[w]hether Court erred in denying the motion to strike juror when after being questioned by the trial judge and counsel prior to the start of trial, juror admitted to hearing about the appellant and his trial and that the appellant was a bad person, but did not remember him on day of jury selection[;]"
- 2) "[w]hether Trial court erred in denying the appellant's motion in limine when the Commonwealth presented speculative evidence about the use of steroids that were baseless and without scientific support and where the doctor was not an expert and could not testify as to the generalizations about steroid use which information is not lay person information, but medical and scientific and hence needs an expert to testify to[;]"
- 3) "[w]hether Trial court erred in not granting the appellants [sic] motion to dismiss the charges of count 1 aggravated assault were [sic] no evidence was presented that the injuries were serious from the medical testimony of the emergency room doctor or

any other medical documentation except for the testimony of the Commonwealth's steroid "expert" who saw the victim a week after the initial emergency room visit[;]"

- 4) "[w]hether Court erred in not having a hearing when the motion in limine was filed, where the court did not make a ruling on the record and ruled based on motions submitted and not a hearing[;]"
- 5) "[w]hether the Commonwealth failed to prove beyond a reasonable doubt that the Appellant committed aggravated assault under 18 PA [sic] C.S.A. § 2702 (a)(1) where the Commonwealth presented insufficient evidence at trial to allow the Jury to find the Appellant to have caused serious bodily injury or attempted to cause serious bodily injury and 18 PA [sic] C.S.A. § 2701 (a)(1) simple assault causing bodily injury when the appellant was justified in protecting another person."

The Court now responds to Defendant's Statement though this Opinion pursuant to Pa.R.A.P. 1925(a).

DISCUSSION

Issue #1: Motion to Strike Juror

The Court has fully addressed this issue in its Opinion and Order dated May 23, 2013, attached hereto and incorporated herein by reference, and is content to rely thereupon for a full explanation of its decision.

Issue #2: Motion in Limine – Testimony Regarding Steroids

The Court has fully addressed this issue in its Opinion and Order dated May 23, 2013, attached hereto and incorporated herein by reference, and is content to rely thereupon for a full explanation of its decision.

Issue #3: Motion to Dismiss Charges – Aggravated Assault

The Defendant argues that the Court erred in denying his oral Motion to Dismiss the aggravated assault charges because the Commonwealth failed to present evidence that the victim's injuries were serious.

A challenge to the sufficiency of the evidence at the close of the Commonwealth's case-in-chief is treated as a motion for judgment of acquittal. *See* Pa. R.Crim.P. 606(a)(1). As our Superior Court has stated previously, "[a] motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge."

Commonwealth v. Hutchinson, 947 A.2d 800, 805 (Pa.Super.2008). Therefore, in this case, for the Court to have granted the Defendant's oral motion, it would have had to find that the Commonwealth failed to introduce sufficient evidence that would allow the jury to find, beyond a reasonable doubt, that the Defendant committed the crime of aggravated assault. .

Under Pennsylvania law, "a person is guilty of aggravated assault if he: (1) 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.A. § 2702(a)(1). "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 presented sufficient evidence to meet its burden regarding the victim's "serious bodily injury" and thus that the Court's denial of the Defendant's oral motion was proper.

The first theory of aggravated assault is that the Defendant intended to cause serious bodily injury. Our Superior Court has found that repeatedly hitting an individual in the head with a fist is sufficient to constitute aggravated assault. *See Commonwealth v. Glover*, 449 A.2d 662 (Pa. Super. 1982). The *Glover* court distinguished the facts in that case to those in *Commonwealth v. Alexander*, where the Pennsylvania Supreme Court found that a single punch to the head, without more, was not sufficient to constitute an attempt to cause serious bodily injury. *See id.*, *see also Commonwealth v. Alexander*, 383 A.2d 887 (Pa. 1978). The instant case is likewise distinguishable from *Alexander*, in that the Defendant in this case did not punch the victim a single time. Instead, the Defendant slammed Mr. Bowersox into the toilet, with enough force to break the toilet, then repeatedly hit Mr. Bowersox in the head. By Mr. Bowersox's estimation, the Defendant hit him more than ten times with a closed fist. *See* Tr. 12/11/12 at 78. Therefore, the Commonwealth met its burden of proving that the Defendant attempted to cause serious bodily injury to the victim.

The alternate theory of aggravated assault is that the Defendant actually caused seriously bodily injury. The victim testified that he suffered three primary injuries as a result of the Defendant's actions: orbital fractures, chipped teeth, and pulled and torn muscles in his back. *See* Transcript of Proceedings of Jury Trial – Day 1 (“Tr. 12/11/12”) at 84. This testimony was confirmed by Doctors Shelly and Turchi, who treated Mr. Bowersox after the incident. Doctor Shelly, the Emergency Room physician at Chambersburg Hospital who treated Mr. Bowersox immediately after the incident, testified that Mr. Bowersox had two fractures in the orbital bone, the bony portion around his eye, a large amount of intraorbital air, and fluid in his sinus cavity. *See* Tr. 12/11/12 at 204. Mr. Bowersox was given an antibiotic to prevent the fluid in his sinus cavity from becoming infected. *See id.* at 212. Further, Doctor Shelly testified that both of Mr.

Bowersox's front teeth were broken. *See id.* at 210. Doctor Turchi, who treated Mr. Bowersox in the weeks after the incident, testified in detail regarding Mr. Bowersox's injury to his lower back. When Dr. Turchi saw Mr. Bowersox five days after the incident with the Defendant, Mr. Bowersox was suffering from severe right-sided lumbar pain. *See id.* at 226. Dr. Turchi also testified that Mr. Bowersox experienced intermittent shooting pain down the back of his leg. *See id.* at 227. Mr. Bowersox also only had a range of motion of his back of 30 percent of normal in all directions. *See id.* at 230. At a visit a week after this initial visit to Dr. Turchi, Mr. Bowersox reported that the pain in his back was still a seven or eight on a scale of ten. *See id.* at 233.

These injuries, particularly the injury to his back, impaired Mr. Bowersox's ability to move around like he had previous to the incident. For example, Mr. Bowersox testified that in the weeks following the incident, it would take him 20 minutes to travel 10 feet to the bathroom. *See id.* at 86. Mr. Bowersox further testified that in the immediate aftermath of the incident, he was unable to stand and at one point, spent six days straight in bed. *See Tr.* 12/11/12 at 86. It took three months after the incident before he started feeling better and didn't have severe pain. *See id.* at 88. He needed to attend physical therapy from July through September 2011. *See id.* at 85. He was unable to return to work until October 2011, five months after the incident. *See id.* at 87. The extent of Mr. Bowersox's injuries and the time required for his recovery demonstrate the protracted extent of his injuries and further prove the severe nature of the injuries. Therefore, under this alternate theory of aggravated assault, the Commonwealth met its burden of proving that the Defendant caused serious bodily injury to the victim, in that the victim suffered a protracted loss or impairment of the function of any bodily member or organ.

When the Defendant's oral motion was made, there was sufficient evidence for the jury to have found that the Defendant committed this crime, beyond a reasonable doubt. The Court properly denied the Defendant's oral motion to dismiss the aggravated assault charge.

Issue #4: Motion in Limine – Lack of Hearing

The Defendant next argues that the Court erred when it decided his Motion in Limine based on the Motion and Answer submitted, rather than holding a hearing on the matter. He claims such a procedure violates Pennsylvania Rule of Criminal Procedure 577. The relevant section of Rule 577 states that "if the judge determines the motion requires a hearing or argument, the court or the court administrator shall schedule the date and time for the hearing or argument." Pa. R.Crim.P. 577(A)(2). As is clear from the plain language of the Rule, the Court has the discretion to determine whether a hearing is necessary for any particular motion. The Honorable Richard J. Walsh, the judge assigned to the Defendant's case at the time he filed his Motion in Limine, apparently determined that such a hearing was unnecessary after reviewing the Defendant's Motion and the Commonwealth's Answer and denied the Motion without such a hearing. This procedure was appropriate under the Rule and therefore, this Court supports Judge Walsh's decision.

Issue #5: Sufficiency of Evidence

The Defendant argues that there was not sufficient evidence introduced at trial to support the jury's verdicts regarding the charges of aggravated assault and simple assault. This Court disagrees.

The standard of review for challenges to the sufficiency of evidence is well established:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light

most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.

Commonwealth v. Reynolds, 835 A.2d 720, 725-26 (Pa. Super. Ct. 2003). A challenge to the sufficiency of the evidence is a question of law. *See id.* at 726. The appellate court may not substitute its judgment for that of the fact-finder. *See Commonwealth v. Mack*, 850 A.2d 690, 693 (Pa. Super. Ct. 2004). Rather, doubts regarding guilt must be resolved by the fact finder unless the evidence is “so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.” *Id.*

The facts and circumstances established by the Commonwealth need not preclude all possibility of innocence. *See id.* Further, the elements of an offense may be found by means of wholly circumstantial evidence. *See id.* The court must review the entire record, and “all evidence actually received must be considered.” *Id.* The trier of fact, in passing upon the credibility of witnesses, is free to believe all, part or none of the evidence. *See id.* As a result, the uncorroborated testimony of a victim, if believed, is sufficient to convict a defendant. *See id.* Finally, our appellate courts have established that “it is the function of the jury to evaluate evidence adduced at trial” so that if “the verdict is based on substantial, if conflicting evidence, it is conclusive on appeal.” *Reynolds*, 835 A.2d at 726 (citations omitted).

Aggravated Assault

The discussion in “Issue #3: Motion to Dismiss Charges – Aggravated Assault,” above, fully discusses the basis for a guilty verdict on the aggravated assault charge, as there was sufficient evidence to enable the jury to find every element of the crime beyond a reasonable doubt. This Court is content to rely thereupon for a full explication for why the Defendant’s

appeal regarding the sufficiency of evidence on the aggravated assault charge should be dismissed.

Simple Assault

Under Pennsylvania law, a person is guilty of simple assault if he “attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another.” 18 Pa. C.S.A. § 2701(a)(1). “Bodily injury” is defined as “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S.A. §2301. The Court finds that the Commonwealth presented sufficient evidence to support the jury’s verdict regarding the charge of simple assault.

As discussed in greater detail above, Mr. Bowersox suffered multiple injuries at the hands of the Defendant. Mr. Bowersox and his Doctors testified regarding the pain that Mr. Bowersox suffered following the incident with the Defendant. For example, Mr. Bowersox testified that he would wake up very early each day to take his pain medication, so that way when he needed to go to the bathroom later, that process would be less painful. *See* Tr. 12/11/12 at 86. Doctor Turchi testified that Mr. Bowersox reported that the pain in his back was still a seven or eight on a scale of ten, two weeks after the incident. *See id.* at 233. Mr. Bowersox also suffered shooting pains from his back down to this right buttock. *See id.* at 235. In addition to the pain Mr. Bowersox suffered because of his back injury, he also suffered a break to his two front teeth and two fractures to his orbital bone, which would fit the definition of “impairment of physical condition.”

There is beyond sufficient evidence to support the jury’s verdict of guilty on the simple assault charge.

Justification Defense

This does not end the inquiry however, as in the instant case the Defendant claimed his use of force was in the defense of another⁴, his sister, requiring the Commonwealth to disprove such justification defense beyond a reasonable doubt⁵. *See Commonwealth v. Torres*, 766 A.2d 342, 344 (Pa. 2001). The use of force against another person in the defense of another is justified when: “(1) the actor would be justified under section 505 (relating to use of force in self-protection) in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect; (2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and (3) the actor believes that his intervention is necessary for the protection of such other person.” *See* 18 Pa. C.S.A. §506.

The Commonwealth may not disprove justification solely on the “fact finder’s disbelief of the defendant’s testimony.” *Torres*, 766 A.2d at 345. Rather, the Commonwealth must adduce some “affirmative proof that the denied fact existed.” *Id.* (citing *Commonwealth v. Graham*, 596 A.2d 1117, 1118 (Pa. 1991)). In the instant case, there was clearly sufficient evidence for the jury to find that the Defendant’s sister did not need protection, or alternatively that the amount of force was unreasonable under the circumstances.

First, there was conflicting testimony about the events that led to the Defendant’s actions toward the victim, Mr. Bowersox. The Defendant testified that he was sitting on the loveseat in his living room when he heard his sister scream “fucking get him, Dustin.” *See* Transcript of Proceedings of Jury Trial – Day 2 (“Tr. 12/12/12”) at 13. He then rushed to the bathroom, at

⁴ Our Superior Court applied the standards relating to self-defense under 18 Pa.C.S.A. §505 to defense of another under 18 Pa.C.S.A. §506. *See Commonwealth v. Smith*, 710 A.2d 1218, 1220 (Pa. Super. 1998).

⁵ In order to properly make justification an issue at trial, there must be some evidence to justify the finding of self-defense. *See Torres*, 766 A.2d at 345. If there is evidence from any source which will support such a claim, the issue is properly before the fact finder. *See id.* Instantly, as the above discussion will demonstrate, Defendant’s testimony brought the issue properly before the jury, who apparently resolved the conflicting testimony in favor of the Commonwealth.

which point "the first thing [he] seen was the back of [Mr. Bowersox] and [the Defendant's] sister on the other side of him," and he grabbed Mr. Bowersox and "sat him forcibly down on the commode." *Id.* at 14. He did not testify that he saw Mr. Bowersox actually do or say anything threatening toward his sister. Billy Jo Bailey, the Defendant's sister, testified similarly. *See id.* at 70-71. On the other hand, Mr. Bowersox and Ms. Millhouse testified that the Defendant, Ms. Bailey, and Ms. Millhouse were in the bathroom and Mr. Bowersox went to the bathroom for the purpose of getting Ms. Millhouse so they could leave. *See id.* at 76, 143. When Mr. Bowersox entered the bathroom, Ms. Bailey yelled for the Defendant to get Mr. Bowersox, at which time the encounter occurred. *Id.*

Based on these individuals' testimony, it is possible that the jury determined that Mr. Bowersox didn't do anything to require Defendant to come to the aid of his sister or that the jury believed the version of events as relayed by Mr. Bowersox and Ms. Millhouse over that of the Defendant and Ms. Bailey. It is the role of the jury to determine issues of credibility and to resolve conflicting testimony. *Commonwealth v. Lilliock*, 740 A.2d 237, 242 (Pa. Super. 1999). It appears, based on their verdicts of guilty, that they resolved that inconsistency in favor of Mr. Bowersox and Ms. Millhouse. These witnesses gave the Commonwealth's version of events substantial support, and therefore this Court is not in a position to second-guess the jury's determination.

Additionally, the jury could have determined that the amount of force used by the Defendant was unreasonable and excessive in light of the totality of the circumstances. Our Superior Court has held that "an actor must conduct himself in a reasonable and prudent manner" when acting in self-defense or defense of another. *Commonwealth v. Smith*, 710 A.2d 1218, 1220 (Pa. Super. 1998). In the instant case, the Defendant testified that after he initially "sat [Mr.

Bowersox] forcibly down on the commode,” Mr. Bowersox hit him in his left eye. *See* Tr. 12/12/12 at 14-15. The Defendant testified that he then took two steps out of the bathroom door and Mr. Bowersox came toward him. *See id.* at 15. When the Defendant “went to grab [Mr. Bowersox],” the tip of his left pinky finger went into Mr. Bowersox’s mouth and Mr. Bowersox bit the finger and wouldn’t let go. *See id.* at 15-16. The Defendant then hit Mr. Bowersox “[a]s many times as it took to let him let go,” not stopping until Mr. Bowersox let go of his finger. *See id.* at 16. The Defendant’s actions in forcibly sitting Mr. Bowersox on the toilet may have been justified in protecting his sister from Mr. Bowersox. However, in the event that they found the Defendant’s explanation of events credible, the jury could have likewise determined that his actions in repeatedly hitting Mr. Bowersox in the face, hard enough to cause Mr. Bowersox to suffer multiple orbital fractures and two broken teeth, because Mr. Bowersox was biting the tip of his pinky finger, was unreasonable and excessive.

Regardless of the jury’s rationale for finding the Defendant guilty of aggravated assault and simple assault, those findings are supported by the evidence and should not be disturbed on appeal.

CONCLUSION

The Defendant raises five issues on appeal, none of which have merit and should be dismissed. This Court properly denied the Defendant’s Motion to Strike Juror because no additional examination of the juror occurred that would have renewed the Defendant’s right to use a peremptory challenge to strike her. The Defendant’s Motion in Limine regarding testimony related to his steroid use was properly denied because the Commonwealth was permitted to use such evidence only for the purpose of demonstrating motive and the risk of unfair prejudice of the evidence did not outweigh the probative value. The Defendant’s Motion to Dismiss the

aggravated assault charges at the conclusion of the Commonwealth's case-in-chief was properly denied because the Commonwealth introduced sufficient evidence that would allow the jury to find, beyond a reasonable doubt, that the Defendant committed the crime of aggravated assault, particularly that he intended or did cause the victim to suffer serious bodily injury. The Court did not err in failing to hold a hearing on the Defendant's Motion in Limine because the Pennsylvania Rules of Criminal Procedure gives the Court the discretion to determine whether a hearing is necessary for any particular motion and Judge Walsh apparently decided it was not necessary to hold a hearing on the Defendant's motion. Finally, there was sufficient evidence to support the jury's verdicts regarding both the aggravated assault and simple assault charges, even given the Defendant's justification defense. This Court, therefore, respectfully requests that the Superior Court dismiss the appeal of the Defendant in its entirety.