

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

JUVENILE DIVISION

IN THE INTEREST OF :
Y.F. : No. 115 JV 2016

Criminal Law - Juvenile Delinquency - Aggravated Assault - Accomplice
Liability

1. Pursuant to Section 2702(a)(1) of the Crimes Code, a person is guilty of aggravated assault if he "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to human life."
2. Where the victim of an assault does not sustain serious bodily injury, as is the case in the instant proceedings, to be guilty of aggravated assault, the Commonwealth must prove that the defendant attempted to cause serious bodily injury, that is that defendant acted with the specific intent of causing such injury.
3. An individual who is not the primary perpetrator or principal actor in committing a crime, may nevertheless be liable for the crime if he was an accomplice of the principal actor.
4. A person is an accomplice of another in the commission of an offense if, acting with the intent to promote or facilitate the commission of the offense, he solicits the other person to commit it or aids, or agrees or attempts to aid, the other person in planning or committing it.
5. Two prongs must be satisfied for a defendant to be found guilty as an accomplice. First, there must be evidence that the defendant intended to aid or promote the underlying offense. Second, there must be evidence that the defendant actively participated in the crime by soliciting, aiding, or agreeing to aid the principal.
6. A party need not be charged as an accomplice to be found guilty as an accomplice if he has notice in advance of facts sufficient to support this basis of liability and was not misled by the Commonwealth to believe that liability on this basis was not in issue.
7. Where the juvenile Defendant on three separate occasions on the same day approached the victim in a confrontational manner - on the first occasion screaming and yelling at the victim, on the second occasion physically attacking the victim in her home and on the third occasion physically attacking the victim outside her home - and where on the third occasion the Juvenile was

observed falling to the ground while being attacked by the Juvenile and another person following which one of the attackers was observed down on her knees on top of the victim, straddling her body, punching her in the head and upper body, and holding her down, while the other stood by her head, kicking her repeatedly in the head and side of her body, and yelling for the person straddling her to also get her, even though the victim and nearby witnesses were unable to identify whether the Juvenile was the individual kicking the victim in the head or was the person straddling the victim, punching her and holding her down, the weight and sufficiency of the evidence supported the court's finding that the Juvenile was guilty of committing the offense of aggravated assault as the evidence clearly established a "shared intent" between the Juvenile and the other person to assault and cause serious bodily injury to the victim, each responsible for the conduct of the other as an accomplice.

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Y.F. : No. 115 JV 2016

Brian B. Gazo, Esquire Counsel for Commonwealth
Arley Kemmerer, Esquire Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. - May 16, 2018

At issue in these juvenile proceedings is whether a juvenile can be adjudicated of committing criminal acts on the basis of accomplice liability where the juvenile was charged not as an accomplice, but as the perpetrator or principal offender.

PROCEDURAL AND FACTUAL BACKGROUND

Three times on November 8, 2016, Y.F., the juvenile in these proceedings, confronted T.W. (the "Victim"), with each confrontation becoming increasingly aggressive and more physical. At the time, Y.F. and the Victim were each seventeen years old, were in the eleventh grade at the Panther Valley High School, and had been friends on and off for several years. The reason why these confrontations occurred is unclear, but appears to be related to the Victim now dating Y.F.'s former boyfriend. (N.T., 9/11/17, p.64).

The first encounter between Y.F. and the Victim on November 8, 2016, occurred in the hallway of the Panther Valley High School near the end of the school day. As the two were walking towards one another, Y.F. began yelling at the Victim and saying she didn't know

what the Victim's problem was. (N.T., 9/11/17, p.10). The Victim yelled back, asking what was wrong. (N.T., 9/11/17, p.10). To keep this first encounter from escalating, one of the Victim's friends escorted her to the principal's office where the Victim remained until the end of the school day. (N.T., 9/11/17, pp.8, 11).

Later that evening, while the Victim was at her home watching T.V. with a fifteen-year-old friend named Melissa, Y.F. and Melissa's eighteen-year-old older sister, Dorian, arrived at the Victim's home sometime between 7:30 and 8:00 P.M. (N.T., 9/11/17, p.15). The Victim's home is located at 32 East Bertsch Street in Lansford, Carbon County, Pennsylvania, directly across the street from a fire company, which was open as a voting place for the general election held on this date. (N.T., 9/11/17, pp.85-86, 97). Y.F. asked if they could come inside, that she wanted to speak with the Victim. (N.T., 9/11/17, pp.16, 60). The Victim agreed, and both Y.F. and Dorian entered the home.

Once inside, Melissa and Dorian stayed in the front living room, into which the front door opened, while Y.F. and the Victim went to the kitchen to talk. Although a dining room separates the living room from the kitchen, a clear line of sight exists from the living room, through the dining room, to the kitchen. (N.T., 9/11/17, p.61). Almost immediately upon entering the kitchen, Y.F. challenged the Victim to a fight, the Victim told Y.F. to leave, and, without warning or provocation, Y.F. swung at the Victim and hit her

in the head. (N.T., 9/11/17, pp.17-19, 63, 66). The Victim hit back and both Y.F. and the Victim ended up fighting with one another on the kitchen floor, at which point Dorian joined the fight and began kicking the Victim. (N.T., 9/11/17, pp.21, 67). Melissa then entered the kitchen and broke up the fight. (N.T., 9/11/17, p.22).

The Victim started to cry and ran upstairs to her bedroom to get away from Y.F and Dorian. (N.T., 9/11/17, p.23). Y.F. and Dorian left the home, but remained on the outside calling for the Victim to come out. (N.T., 9/11/17, p.34). Melissa went upstairs and told the Victim to go downstairs and tell Y.F. and Dorian to go away. (N.T., 9/11/17, pp.23-24). With this objective, the Victim went downstairs and outside onto the front porch where she told both to leave. (N.T., 9/11/17, pp.23-24). Y.F. and Dorian yelled back at the Victim, still wanting to fight, and Y.F. began walking towards the Victim in a menacing manner. (N.T., 9/11/17, p.25).

As Y.F. approached the Victim, Melissa intervened and hit Y.F. first. (N.T., 9/11/17, pp.25-26; N.T., 10/11/17, p.81). The fight between Y.F. and Melissa which followed and began on the sidewalk at the bottom of the porch steps continued until broken up by Dorian, after which Y.F. turned on the Victim and began punching her in the face. (N.T., 9/11/17, pp.27-28, 75-76, 97-98). Soon after, Dorian again joined Y.F. in hitting the Victim. (N.T., 9/11/17, pp.28, 80-81).

The combined attack by Y.F. and Dorian on the Victim progressed from the sidewalk out to and onto East Bertsch Street in front of the Victim's home and across from the fire company. (N.T., 9/11/17, pp.27-28, 102). With both Y.F. and Dorian hitting her, the Victim fell to the ground. (N.T., 9/11/17, pp.28-29). As the Victim was lying on East Bertsch Street, Y.F. and Dorian acted in concert in attacking her: either Y.F. or Dorian was down on her knees on top of the Victim, straddling her body, punching her in the head and upper body, and holding her down, while the other stood by her head kicking her repeatedly in the head and the side of her body and yelling for the one straddling her to also get her. (N.T., 9/11/17, pp.30, 91-93, 132-34; 10/11/17, pp.6-7, 44-46).¹

The Victim, who was outnumbered and tried to protect herself against the assault, was knocked unconscious. (N.T., 10/11/17, pp.51, 143). The attack continued until a bystander on the other side of the street by the fire company yelled that she was calling the police, whereupon Y.F. and Dorian got up and left the Victim lying on the street. (N.T., 10/11/17, pp.46-47, 54-55). Soon after, a chair from the front porch of the Victim's home was thrown through the front window, and Y.F. and Dorian were observed running from the area. Although it appears likely that either Y.F. or Dorian, or both, were responsible for smashing the front window, no clear

¹ The third-party witnesses to this event were unable to identify who was standing by the Victim's head and who was straddling her. (N.T., 9/11/17, pp.135; N.T., 10/11/17, p.8).

evidence was presented whether they acted separately or together in causing this damage. (N.T., 9/11/17, pp.94, 135-36, 142). After Y.F. and Dorian left, the Victim stood up and walked to the other side of the street where she collapsed on the sidewalk near approximately ten people who were gathered outside the fire company on Election Day. (N.T., 9/11/17, pp.53, 85-86, 135; N.T., 10/11/17, p.10).

An ambulance transported the Victim to St. Luke's Miners Memorial Hospital in Coaldale, where she was treated in the emergency room and CAT scans taken of her head, facial bones, neck, chest, abdomen and pelvis. (N.T., 10/11/17, pp.27, 122). Dr. Maria Romanenko, the attending emergency room physician, observed various signs of trauma - bruised ribs; tenderness to the Victim's neck, upper back and the midline of her spine; and multiple abrasions to her face and head - and determined that the Victim had sustained a concussion. (N.T., 10/11/17, pp.24-26, 28, 30-31, 54). For several days, up to several weeks after the incident, the Victim experienced soreness, headaches, blurry vision and difficulty breathing. (N.T., 9/11/17, pp.34-40; N.T., 10/11/17, p.29). There was no evidence of any internal injury or fractures. (N.T., 10/11/17, p.27). The Victim did not sustain any actual serious bodily injuries as that term is defined in the Crimes Code. (N.T., 10/11/17, pp.30, 39-40). See 18 Pa.C.S.A. § 2301 (Definitions).

On March 20, 2017, Y.F. was charged in juvenile proceedings with

aggravated assault,² simple assault,³ harassment,⁴ criminal mischief,⁵ and two counts of disorderly conduct.⁶ Hearings on the juvenile petition were held on September 11, 2017; October 11, 2017; and October 31, 2017. At the conclusion of the hearing held on October 11, 2017, the court found Y.F. guilty of the summary offenses of harassment and both counts of disorderly conduct and held that Y.F. had committed the offense of simple assault; the count of criminal mischief was dismissed. A ruling on the charge of aggravated assault was deferred pending an opportunity for counsel to brief whether Y.F., who had not been charged as an accomplice, could be held responsible on a theory of accomplice liability. On October 31, 2017, Y.F. was found liable both as an accomplice and as a principal actor.

Because Y.F. moved from Carbon County to Lehigh County during the pendency of these proceedings, pursuant to 42 Pa.C.S.A. § 6321(c) (Transfer to Another Court in this Commonwealth) and Pa.R.J.C.P. 302(A) (Inter-County Transfer), the matter was transferred to Lehigh County where Y.F. was subsequently adjudicated delinquent and placed on formal probation on February 21, 2018. On March 5, 2018, Y.F. filed a post-dispositional motion, which we denied by order dated April 4, 2018. On May 4, 2018, Y.F. appealed from the Final Order of Disposition entered by the Honorable Robert L. Steinberg in Lehigh

² 18 Pa.C.S.A. § 2702(a)(1).

³ 18 Pa.C.S.A. § 2701(a)(1).

⁴ 18 Pa.C.S.A. § 2709(a)(1).

County. On May 9, 2018, Judge Steinberg issued a 1925(b) Order pursuant to Pa.R.A.P. 1925(b) directing Y.F. to file a concise statement of the errors complained of on appeal. Pending receipt of that statement and to explain the reasons behind our denial of Y.F.'s Post-Disposition Motion, we author this memorandum opinion.⁷

DISCUSSION

Y.F. contends our finding at the conclusion of the adjudicatory hearing that she committed the criminal acts of aggravated and simple assault is contrary to the weight and sufficiency of the evidence. As to the charge of simple assault, the foregoing recitation of the underlying facts found and the evidence in support of these findings amply establishes Y.F.'s liability of this offense and, therefore, we believe no further discussion is necessary.⁸ As to the charge of

⁵ 18 Pa.C.S.A. § 3304(a)(5).

⁶ 18 Pa.C.S.A. §§ 5503(a)(1), 5503(a)(4).

⁷ In juvenile court proceedings the final order from which a direct appeal may be taken is the order of disposition, entered after the juvenile is adjudicated delinquent. See Commonwealth v. S.F., 912 A.2d 887, 888-89 (Pa.Super. 2006). Because of this, it is unclear whether a post-disposition motion which challenges only the findings at the adjudicatory hearing, and not the separate adjudication of delinquency or order of disposition, should be filed with the court which held the adjudicatory hearing or the court which entered the final order. As a practical matter, Y.F.'s filing of her post-disposition motion with this court makes logical sense since either way it is this court which needs to explain its rulings. Nevertheless, we caution that the filing in this court may be legally incorrect. Hopefully, Pa.R.J.C.P. 616, which has been reserved to address post-disposition procedures and appeals in juvenile matters but has yet to be promulgated, will address this issue.

⁸ As to the applicable standard of review, the Superior Court gave the following concise summary in Commonwealth v. McKeever:

When evaluating a sufficiency of the evidence claim, this Court must view all the evidence in the light most favorable to the verdict winner, and drawing all reasonable inferences in its favor, determine whether the fact finder could have reasonably found every element of the crime to be established beyond a reasonable doubt. Commonwealth v. Russell, 445 Pa.Super. 510, 665 A.2d 1239, 1246 (1995), appeal denied, 544 Pa. 628, 675 A.2d 1246 (1996). The weight of the evidence

aggravated assault, Y.F. contends that because the third-party witnesses presented by the Commonwealth observed only a short part of the confrontation outside of the Victim's home and were unable to identify who was straddling the Victim's body and who was standing by her head, the evidence did not support a finding that Y.F. attempted to cause serious bodily injury.⁹ Similarly, as respects the Victim's testimony, Y.F. argues that other than the Victim's testimony that both Y.F. and Dorian were repeatedly hitting and kicking her, the Victim was unable to identify specifically which kicks and punches were thrown by Y.F. and which by Dorian. (N.T., 9/11/17, pp.30-31, 91-93).¹⁰ What Y.F. fails to appreciate is that

is a determination for the trial court, and we may only reverse if the verdict is so contrary to the evidence as to shock one's sense of justice. *Id.*

689 A.2d 272, 274 (Pa.Super. 1997).

⁹ Section 2702(a)(1) of the Crimes Code provides that a person is guilty of aggravated assault if he "attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to human life." 18 Pa.C.S.A. § 2702(a)(1). Under this statute, where the victim of an assault does not sustain serious bodily injury, as here, to be guilty of aggravated assault, the Commonwealth must prove the defendant acted with the specific intent of causing such injury. Commonwealth v. Alexander, 383 A.2d 887, 889 (Pa. 1978).

¹⁰ Although the Victim testified that she was unable to differentiate between who was hitting and kicking her when she was outside on East Bertsch Street being beaten simultaneously by both Y.F. and Dorian, at one point she identified Y.F. as the individual who was standing by her head. (N.T., 9/11/17, p.91). The Victim's testimony was supported by a written statement given on the same day of the incident by Tolan Kunkle, a neighbor who witnessed a portion of the assault on the Victim by both Y.F. and Dorian while the Victim was lying on East Bertsch Street. (Commonwealth Exhibit No.1). Additionally, the evidence supported a finding that the individual standing by the Victim's head was the more aggressive of the two, was the person directing the other to assist and to participate in the physical assault, and was the one causing the greatest injury by kicking the Victim in the head. All of this reinforced a finding that as between Y.F. and Dorian, Y.F. was the leader, was the one intent on fighting the Victim, and was the one directing Dorian to assist as Y.F. kicked the Victim in the head. Nevertheless, because the weight of the evidence identifying Y.F. as the person standing by the Victim's head is in dispute, we explain in the following text why the need to make this identification is not critical to holding Y.F. responsible for aggravated assault.

whether she is considered the principal or an accomplice, liability exists. See Commonwealth v. Murphy, 844 A.2d 1228, 1234 (Pa. 2004) (“It is well-established [] that a defendant, who was not a principal actor in committing the crime, may nevertheless be liable for the crime if he was an accomplice of a principal actor.”).

As a general rule, a person is an accomplice of another in the commission of an offense if, acting with the intent to promote or facilitate the commission of the offense, he solicits the other person to commit it or aids, or agrees or attempts to aid, the other person in planning or committing it. Commonwealth v. Knox, 105 A.3d 1194, 1196 (Pa. 2014) (citing 18 Pa.C.S.A. § 306).¹¹

See also Commonwealth v. Knox, 105 A.3d 1194, 1198 (Pa. 2014) (Eakin, J., concurring) (noting that accomplice liability is a theory, not a predicate offense such as conspiracy for which an accused can independently be found “guilty”).

¹¹ With regard to accomplice liability, the Crimes Code provides, in relevant part, as follows:

§ 306. Liability for conduct of another; complicity

(a) General rule.—A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(b) Conduct of another.—A person is legally accountable for the conduct of another person when:

* * * *

(3) he is an accomplice of such person in the commission of the offense.

(c) Accomplice defined.—A person is an accomplice of another person in the commission of an offense if:

(1) with the intent of promoting or facilitating the commission of the offense, he:

(i) solicits such other person to commit; or

(ii) aids or agrees or attempts to aid such other person in planning or committing it....

[T]wo prongs must be satisfied for a defendant to be found guilty as an accomplice. First, there must be evidence that the defendant intended to aid or promote the underlying offense. Second, there must be evidence that the defendant actively participated in the crime by soliciting, aiding, or agreeing to aid the principal. While these two requirements may be established by circumstantial evidence, a defendant cannot be an accomplice simply based on evidence that he knew about the crime or was present at the crime scene. There must be some additional evidence that the defendant intended to aid in the commission of the underlying crime, and then did or attempted to do so. With regard to the amount of aid, it need not be substantial so long as it was offered to the principal to assist him in committing or attempting to commit the crime.

Commonwealth v. Murphy, 844 A.2d at 1234 (internal citations and quotations omitted). Furthermore,

[a]ccomplice liability may be established wholly by circumstantial evidence. Only the least degree of concert or collusion in the commission of the offense is sufficient to sustain a finding of responsibility as an accomplice. No agreement is required, only aid.

Commonwealth v. Mitchell, 135 A.3d 1097, 1102 (Pa.Super. 2016) (internal citations and quotations omitted), *appeal denied*, 145 A.3d 725 (Pa. 2016).

When supported by the evidence, a court is required to give an instruction on accomplice liability, even if neither party requests such instruction. Commonwealth v. Perkins, 401 A.2d 1320, 1323 (Pa.

(d) Culpability of accomplice. —When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

1979) (opinion in support of affirmance). Nor need a party be charged as an accomplice to be found guilty as an accomplice if he has notice in advance of facts sufficient to support this basis of liability and was not misled by the Commonwealth to believe that liability on this basis was not in issue.

A defendant may be convicted as an accessory though only charged as a principal. As long as the defendant is put on notice that the Commonwealth may pursue theories of liability that link the defendant and another in commission of crimes, the defendant cannot claim that the Commonwealth's pursuit of such a theory surprised and prejudiced the defendant.

Commonwealth v. Spotz, 716 A.2d 580, 588 (Pa. 1998), *cert. denied*, 526 U.S. 1070 (1999) (citations omitted). See also Commonwealth v. McDuffie, 466 A.2d 660 (Pa.Super. 1983) (holding that even though the criminal information charged the defendant solely as a perpetrator, because the information also alleged that the defendant had acted with another, the defendant was not misled and could be convicted as an accomplice).

Y.F.'s contention that she could not be adjudicated delinquent of aggravated assault under a theory of accomplice liability because she was not charged as an accomplice, nor was this theory of liability advanced by the Commonwealth prior to or during trial, is without merit. First, Y.F. cannot credibly argue that she was not on notice of this potential theory of liability before any evidence was presented by either party. In the Commonwealth's affidavit of probable cause, the following information pertinent to this issue

was disclosed: that the Victim heard going around school that Y.F. and Dorian wanted to fight her for an unknown reason; that after Y.F. and Dorian arrived at the Victim's home on the evening of November 8, 2016, Y.F. began to strike the Victim with a fist in the kitchen and that when Dorian entered the kitchen she too began to punch the Victim as she fell to the ground; that while outside the Victim's home, Y.F. began to punch the Victim in the face and body and after she fell to the ground, Y.F. continued to punch the Victim as Dorian kicked and swung at her body; that two neighbors witnessed the Victim being attacked by two females, that one was on top of the Victim punching her in the face and the other was kicking her at the same time; and that both Y.F. and Dorian had removed all of their jewelry, including earrings, nose rings, facial piercings and bracelets, before they entered the Victim's home and had these items sitting on the porch, indicating that they had planned the assault before entering the home and entered the home with the intention of assaulting the Victim.¹²

Moreover, that Y.F. might be found liable for aggravated assault either as a principal or an accomplice was amply demonstrated by the testimony presented at the adjudicatory hearing. Evidence of Y.F.'s intent to confront the Victim started earlier in the day at the Panther Valley High School when Y.F. began yelling and screaming at

¹² At the adjudicatory hearing, the Victim testified to only having noticed that Dorian had removed pierced jewelry under her eye. (N.T., 9/11/17, pp.105-106, 116-17).

the Victim and taunting her by asking, "What's your problem?" It continued at the Victim's home later that evening when Y.F. and Dorian arrived at the Victim's home together, after which, while the Victim and Y.F. were alone in the kitchen, Y.F., without provocation or warning, suddenly hit the Victim in the head and was soon joined and assisted by Dorian in a two-on-one attack of the Victim. After leaving the inside of the home, both Y.F. and Dorian remained on the Victim's property, both trying to draw her into a fight. Once the Victim came outside, the two attacked the Victim, brought her to the ground, and while one held her down, straddling the Victim with her knees and punching her in the head and upper body, the other stood by the Victim's head, kicking her in the head, and inciting or encouraging the person holding the Victim down to also get her.

The evidence clearly established a "shared intent" of Y.F. and Dorian to assault and physically harm the Victim and demonstrated the two acted in concert in actively attempting to inflict serious bodily injury on the Victim. Regardless of who was standing by the Victim's head and who was straddling her, each was responsible for the conduct of the other as an accomplice even though no statements of their specific intent were uttered:

Where one does not verbalize the reasons for his actions, we are forced to look to the act itself to glean the intentions of the actor. Where the intention of the actor is obvious from the act itself, the finder of fact is justified in assigning the intention that is suggested by the conduct.

Commonwealth v. Meredith, 416 A.2d 481, 485 (Pa. 1980). See Commonwealth v. Kinney, 157 A.3d 968 (Pa.Super. 2017) (holding the evidence sufficient to support a conviction of aggravated assault where the defendant attempted to cause serious bodily injury to the victim by repeatedly kicking and punching the victim in the head until the victim lost consciousness), *appeal denied*, 170 A.3d 971 (Pa. 2017); Commonwealth v. Vining, 744 A.2d 310, 321 (Pa.Super. 2000) (holding that to be found guilty as an accomplice, the defendant must have actively and purposely engaged in criminal activity: that he must be an active participant in committing the crime and must share the principal's intent to commit the crime), *appeal denied*, 764 A.2d 1069 (Pa. 2000).

CONCLUSION

In summary, the evidence supports Y.F.'s commission of the offense of aggravated assault either as an accomplice or as the principal actor. That Y.F. was not charged as an accomplice does not preclude Y.R.'s responsibility as an accomplice since Y.F. was on notice in the affidavit of probable cause and the evidence presented in the Commonwealth's case-in-chief of the potential for accomplice liability.

BY THE COURT:

P.J.