

20-5603

No. _____

Supreme Court, U.S.

FILED

AUG 24 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL GLOVER — PETITIONER
(Your Name)

vs.

STATE OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Pennsylvania Superior Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Glover NJ6033
(Your Name)

1100 Pike Street
(Address)

Huntingdon, PA 16654-1112
(City, State, Zip Code)

(814) 643-2400
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

I. DID THE PENNSYLVANIA STATE COURTS VIOLATE THE PETITIONER'S 5TH & 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN THEY FOUND THE PETITIONER GUILTY OF NUMEROUS CHARGES IN WHICH THE EVIDENCE WAS INSUFFICIENT TO PROVE THE PETITIONER GUILTY BEYOND A REASONABLE DOUBT.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

| | |
|---|----|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... | 3 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 5 |
| CONCLUSION..... | 12 |

INDEX TO APPENDICES

APPENDIX A Pennsylvania Supreme Court Order denying the Petition
For Allowance of Appeal

APPENDIX B Pennsylvania Superior Court Opinion denying the appeal

APPENDIX C Philadelphia County Court of Common Pleas Opinion

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

| | PAGE NUMBER |
|---|-------------|
| <u>CASES</u> | |
| <u>Commonwealth v. Brown</u> , 484 A.2d 738, 742 (Pa. 1984) | 10 |
| <u>Commonwealth v. Bullock</u> , 170 A.3d 1109 (Pa. Super 2017) | 8 |
| <u>Commonwealth v. Fortune</u> , 68 A.3d 980, 984 (Pa. Super 2013) | 8 |
| <u>Commonwealth v. Hubbard</u> , 372 A.2d 687, 692 (Pa. 1977) | 8 |
| <u>Commonwealth v. Matthews</u> , 870 A.2d 924 (Pa. 2005) | 7 |
| <u>Commonwealth v. McNair</u> , 546 A.2d 688, 690 (Pa. Super 1988) | 10 |
| <u>Commonwealth v. Smith</u> , 481 A.2d 1352 (Pa. Super 1984) | 11 |
| <u>Commonwealth v. Woong Knee New</u> , 47 A.2d 450, 468 (Pa. 1946) | 8 |
| <u>STATUES AND RULES</u> | |
| 18 Pa.C.S.A. § 901 (A) | 8 |
| 18 Pa.C.S.A. § 907(A) | 6 |
| 18 Pa.C.S.A. § 302(b)(1)(i) | 7 |
| 18 Pa.C.S.A. § 2301 | 7 |
| 18 Pa.C.S.A. § 2702(A)(1) | 7 |
| 18 Pa.C.S.A. § 2709.1(a)(1) | 11 |

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Philadelphia County Common Pleas court appears at Appendix C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was May 27, 2020. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 5th & 14th Amendments of the United States Constitution

STATEMENT OF THE CASE

On March 17, 2016, Petitioner was arrested and charged on six separate complaints in Philadelphia Municipal Court. On April 19, 2016, petitioner was arrested and charged with additional crimes on a separate complaint. Pursuant to the Commonwealth's motion to consolidate, on September 16, 2016, Judge Woelpper ordered that all of the matters be consolidated for trial.

On February 9, 2018, Petitioner waived his right to a trial by jury and immediately thereafter commenced a bench trial before Judge Woelpper. After a two-day trial, on February 13, 2018, the petitioner was found guilty of numerous offenses.

The petitioner then filed a timely appeal to the Pennsylvania Superior Court, which affirmed the lower court's decision on December 6, 2019.

Petitioner went on to file a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied on May 27, 2020.

REASONS FOR GRANTING THE PETITION

The Pennsylvania State Courts have made erroneous factual findings as well as misapplied numerous rules of state law and as such have violated the petitioner's United States Constitution's 5th & 14th Amendments.

Docket CP-51-CR-0003675-2016

The lower court convicted Petitioner of Robbery and PIC based on Petitioner's interaction with Ms. Miles outside of her place of work on February 1, 2016. The evidence, however, failed to support those verdicts.

Ms. Miles testified that Petitioner got into the passenger seat of her car while she was on the phone (N.T. 2/9/18, p. 15). She testified that she could not remember if her phone was in her hand or under her radio (id.). According to Ms. Miles's testimony, Petitioner "snatched" the phone and when she tried to reach for it, Petitioner "hit [her] on [her] face with [] the bottom of [the] phone" (id.). She did not testify to any contemporaneous threats or any bodily injury she suffered. Nor did Ms. Miles testify that she was in fear of immediate

bodily injury. As such, the evidence was insufficient to find Petitioner guilty of that charge.

In relation to the same March 1st incident, the lower court found Petitioner guilty of PIC. That crime is established when the government proves that a person "possesses any instrument of crime with intent to employ it criminally." 18 Pa.C.S.A. § 907(a). An "instrument of crime is further defined as "[a]nything specially made or specially adapted for criminal use[,]'" or "[a]nything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have." § 907(d).

The evidence presented did not prove that Petitioner possessed the phone with the intent to employ it criminally. Indeed, the evidence established that, when the phone struck Ms. Miles's head, it was during a struggle. Petitioner could not have had the intent to employ the phone with a criminal intent, as the entire struggle was a spontaneous and unpredictable event. And though the evidence established theft, but the fact that an item was stolen does not render it an instrument of crime. Ms. Miles was struck in the head with the phone, but it occurred during a struggle. Though Petitioner committed several offenses during the interaction with Ms. Miles, the evidence did not support a finding that Petitioner is guilty of PIC.

Docket CP-51-CR-0003670-2016

On this docket, the Commonwealth charged Petitioner with various crimes arising on March 12, 2016 outside of Ms. Miles's home. This docket charges only crimes in which Ms. Miles – and not her sister – was the complaining witness.

The Commonwealth charged Petitioner with Aggravated Assault, graded as a felony of the first degree. In order to prove an actor committed Aggravated Assault as a felony of the first degree, the Commonwealth must prove that "he attempt[ed] to cause serious bodily injury to another, or cause[d] 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 "[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.

"A person acts intentionally with respect to a material element of an offense when ... it is his conscious object to engage in conduct of that nature or to cause such a result[.]" 18 Pa.C.S. § 302(b)(1)(i). "As intent is a subjective frame of mind, it is of necessity difficult of direct proof." *Commonwealth v. Matthews*, 870 A.2d 924, 929 (Pa. 2005) (citations omitted). "[I]ntent can be proven by direct or circumstantial evidence; it may be inferred from acts or conduct or from the attendant circumstances." Id.

"A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 Pa.C.S. § 901(a). For purposes of an Aggravated Assault charge, "an 'attempt' is found where an accused who possesses the required specific intent acts in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another. An intent ordinarily must be proven through circumstantial evidence and inferred from acts, conduct or attendant circumstances." *Commonwealth v. Fortune*, 68 A.3d 980, 984 (Pa. Super. 2013) (*en banc*) (internal citations omitted).

Commonwealth v. Bullock, 170 A.3d 1109 (Pa. Super. 2017).

When two equally reasonable and mutually inconsistent inferences can be drawn from the same set of circumstances, a jury must not be permitted to guess which inference it will adopt, especially when one of the two guesses may result in depriving a defendant of his life or his liberty.

Commonwealth v. Hubbard, 372 A.2d 687, 692 (Pa. 1977), (*quoting*

Commonwealth v. Woong Knee New, 47 A.2d 450, 468 (Pa. 1946)).

Here, the Commonwealth failed to specifically allege what act Petitioner engaged in that would constitute the crime. The Commonwealth's evidence established that Petitioner dragged Ms. Miles "just a little bit" (N.T. 2/9/18, p. 42) and that his car collided with her car (id. at 43). But the result of these acts resulted in a back ache, body ache and scratches to Ms. Miles's arm (id. at 46). Those injuries do not establish serious bodily injury. Thus, the Commonwealth was obliged to prove that Petitioner intended to cause

serious bodily injury. Petitioner could have continued to drag Ms. Miles. And he could have struck her vehicle in a spot closer to her or her sister. But he did not. His actions were certainly reckless, and dragging Ms. Miles satisfied Aggravated Assault, as a felony of the *second* degree. But his actions did not constitute the crime as a felony of the first degree.

Docket CP-51-CR-0003671-2016

On this docket, the Commonwealth charged Petitioner with his actions on March 12, 2016 outside of Ms. Miles's home, but with Nadia as the complaining witness. As with the docket charging Petitioner with his contemporaneous actions toward Mr. Miles, the charges against Petitioner regarding Nadia do not specify whether the charges are based on him backing up his car toward Nadia or colliding with Ms. Miles's car, in which Nadia was a passenger. But under either standard, the Commonwealth's evidence fails.

Nadia testified that, as a result of the incidents, she was "sore" but did not have to go to the hospital (*id.* at 115). As a result, the Commonwealth had to prove that Petitioner intended to cause serious bodily injury to sustain a conviction for Aggravated Assault, graded as a felony of the first degree. But the evidence merely established that Petitioner was reckless. No

evidence supported the conclusion that Petitioner consciously engaged in conduct likely to result in serious bodily injury.

Likewise, the Commonwealth's evidence did not prove a distinct count of PIC. If anything, the charge was duplicative of the PIC charge on docket 3670-2016. But more importantly, the Commonwealth did not prove that Petitioner used the vehicle criminally toward Nadia. His actions were reckless, not criminal. As such, the evidence was insufficient.

Docket CP-51-CR-0003672-2016

The lower court convicted Petitioner of Robbery, under subsection (a)(1)(iv) of Section 3701, thus making the crime a felony of the second degree (the Commonwealth had charged Petitioner with a felony of the first degree). But the testimony and evidence failed to establish the force – however slight – necessary to sustain any gradation of robbery. Ms. Miles testified that the phone "slipped" out of her hand. She did not testify to any force being used to take the phone.

In *Commonwealth v. Brown*, 484 A.2d 738, 742 (Pa. 1984), and *Commonwealth v. McNair*, 546 A.2d 688, 690 (Pa. Super. 1988), our Supreme Court and this Court held that snatching a bag or purse off of a victim was sufficient force to elevate theft to robbery. But in both of those cases, the victim was able to establish force exerted by the accused. That is

lacking in the instant matter. Petitioner's case is similar to that in *Commonwealth v. Smith*, 481 A.2d 1352 (Pa. Super. 1984), where the evidence was found to be insufficient. There, the defendant took a pack of cigarettes from a blind person. And since that victim was not able to testify as to any force, the evidence could not support robbery. Id. at 1353. As with Petitioner's case, there simply was no force exerted to accomplish the crime. Thus, it is a theft, not a robbery.

In addition, the Commonwealth charged Petitioner with Stalking, under Section 2709.1(a)(1). A person commits an offense under that subsection when he "engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person[.]" 18 Pa.C.S.A. § 2709.1(a)(1). Inherent in that charge is a "course of conduct" or repeated acts toward another person. Id. Here, the Bills of Information set forth a single date – March 14, 2016 – and the evidence supported only that single date. He was charged with the same offense on other dockets, thus this charge was duplicative and unsupported by the evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Moore

Date: August 19, 2020