

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS RAYMOND,	§	
	§	No. 309, 2006
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID#9912019956
	§	ID#9912018827
Plaintiff Below,	§	ID#0303015718
Appellee.	§	
	§	

Submitted: December 22, 2006

Decided: March 6, 2007

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

***ORDER***

(1) Appellant Thomas Raymond appeals his conviction by a Superior Court Judge of second degree assault.<sup>1</sup> Raymond argues that insufficient evidence was presented to prove each element of assault second degree. We find no merit to his argument and affirm.

(2) On March 21, 2003, Inspector James Wright (“Wright”) of the Wilmington Police Department was on patrol in the Southbridge area of Wilmington. At the 900 block of South Claymont Street, he saw a man, later identified as Raymond, standing in the middle of a courtyard. Wright got out of

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<sup>1</sup> 11 Del. C. § 612(a)(3).

the car and called for the man to come over. After first ignoring his request, Raymond walked toward Wright and eventually told him that his name was Timothy Raymond.<sup>2</sup> After checking the name through the police data center, Wright found out that Timothy Raymond had an outstanding warrant.

(3) Raymond and Wright then walked toward a white Ford Mustang that Raymond said he had driven to the courtyard. Wright asked for the vehicle registration and advised Raymond that he had an outstanding warrant as other officers arrived at the scene.

(4) When Wright told Raymond about the warrant, Raymond pushed him out of the way and began to flee. This began a scuffle between Raymond and the officers, lasting more than five minutes. Officer Burch testified that while he was chasing Raymond, Raymond fell and then stood back up again in a “defensive boxer-type stance.” Burch finally tackled Raymond to the ground, with Raymond in a fetal position and his hands tucked under his body. Raymond continued to struggle and elbowed Burch in the eye. Raymond also grabbed Burch’s hand and was able to restrain Burch for ten or fifteen seconds. He squeezed Burch’s hand so tight that Burch suffered two broken bones. He also grabbed at Officer Mullin’s gun. The officers subdued Raymond and took him into custody.

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<sup>2</sup> Timothy Raymond is the defendant’s brother.

(5) Raymond testified that he was in the area to purchase drugs. He admitted to running from the police, but said that once the police caught him, they beat him from head to toe. He claimed that he lost consciousness and was only fighting to protect himself. He also testified that he never grabbed Burch's hands or touched any of the officers. Finally, Raymond said that he was small in stature at the time because of his crack cocaine addiction and therefore, would not have been able to assault the officers.

(6) Raymond charged with two counts of second degree assault, three counts of offensive touching, resisting arrest, and possession of drug paraphernalia. He was convicted of second degree assault, resisting arrest, criminal impersonation, and possession of drug paraphernalia after a bench trial held on January 19, 2006. Raymond appeals only his second degree assault conviction.

(7) Raymond concedes that he was resisting arrest, but argues that there was insufficient evidence to prove that he intentionally injured Burch's hand. He contends that his hands were beneath him during the scuffle, that there was no testimony as to how the injury exactly took place, and that if he did grab Burch's hand it was only in self-defense. We review his claim that there was insufficient evidence to determine whether, considering the evidence in the light most

favorable to the State, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.<sup>3</sup>

(8) Section 612(a)(3) of the Criminal Code provides that “[a] person is guilty of assault in the second degree when the person intentionally causes physical injury to a law enforcement officer . . . who is acting in the lawful performance of duty.”<sup>4</sup>

(9) Raymond argues that the State did not produce sufficient evidence of the physical injury to the Officer. Physical injury is defined as the “impairment of physical condition or substantial pain.”<sup>5</sup> Expert medical testimony or records is not required to prove physical injury. Instead, evidence presented by a victim is sufficient to prove physical injury for purposes of second degree assault.<sup>6</sup> Burch testified that he suffered two broken bones and swelling in his hand. As the trial court stated, “[t]he issue of physical injury . . . has been sufficiently established or established beyond a reasonable doubt, that he suffered an injury to his hand from the activity or activities in fighting with the defendant in an attempt to subdue him.” Burch’s testimony suffices to prove the “physical injury” element.

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<sup>3</sup> *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

<sup>4</sup> 11 *Del. C.* § 612(a)(3).

<sup>5</sup> 11 *Del. C.* § 222(23).

<sup>6</sup> *Davis v. State*, 1999 WL 86055, at \*1 (Del.); *see also Washington v. State*, 2006 WL 1520576, at \*2 (Del. Super.), *aff’d*, 2006 WL 3423801 (Del.).

(10) Raymond next argues that the State produced insufficient evidence to show that he acted intentionally. We disagree. There was evidence that Raymond became angry and upset when he was told that he was under arrest and that he refused to comply with officers' commands, and physically resisted them. Raymond's testimony was contradicted by the police and the trial judge's findings rested upon his credibility determinations. The trial judge weighed the credibility of the witnesses and concluded that Raymond's version of the events was not credible.<sup>7</sup> We are satisfied that a rationale trier of fact could have found the essential elements of the offense beyond a reasonable doubt based upon the evidence presented at trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>7</sup> The court explained:

And therefore, I would have to give the testimony of the State's witnesses more weight. . . . But I do find that the State, in a close case, has established beyond a reasonable doubt that you acted intentionally during the course of fighting to cause physical injury, and there was impairment of physical condition and substantial pain.

The Court also noted that had Raymond's testimony been true, he would have required medical treatment as a result of the severe beating he alleged took place.