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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO,)	CASE NO. CR 16 607449
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
-vs-)	<u>JUDGMENT ENTRY UPON A</u>
)	<u>BENCH TRIAL</u>
)	
CURTIS W. BENSON,)	
)	
Defendant.)	

John P. O'Donnell, J.:

Curtis W. Benson is charged in a one count indictment with the June 1, 2016, felonious assault of Octavious Hall. In particular, the State of Ohio alleges that Benson violated section 2903.11(A)(1) of the Ohio Revised Code by knowingly causing serious physical harm to Octavious Hall. The defendant waived a jury and the case was tried to the court on June 15 and 16, 2017. This judgment was delivered on the oral record, in open court, before all counsel and the defendant on July 11, 2017.

The evidence

Curtis Benson lives in an apartment at 22350 Euclid Avenue in Euclid. At the time of the crime alleged here Octavious Hall lived in the adjacent building at 22300 Euclid. The buildings are part of the same apartment complex and are separated by a grass courtyard transected by a

concrete walkway, with a parking lot in the rear.

On June 1, 2016, Benson and Paul J. Weinberg were sitting out in the southeast portion of the courtyard near Benson's building and the parking lot. Hall, who had a history of verbally abusing people in the complex, including Benson, and who was known as a drug addict, was on the rear steps at the northwest corner of his building. According to Hall, he was waiting for a family member to drive into the rear parking lot and pick him up.

The steps where Hall was hanging out are visible to a security camera mounted on the south side of Hall's building facing north. Video from the camera was admitted as evidence at trial. Although the images were not accompanied by sound they clearly showed Hall yelling and gesturing for an extended period of time toward somebody who was outside of the camera's range.

Weinberg testified that Hall was relentlessly yelling at Benson. The recurring theme to his remarks was a threat to slit Benson's throat.

Evie Pernell Lamar is a carpet technician who was working at the apartment complex. He was acquainted with both Hall and Benson. He heard Hall threatening to kill Benson and said that Hall never stopped yelling and threatening Benson that afternoon. At one point Benson asked Lamar to get Hall to stop "fucking" with him.

Ultimately, Hall left his perch on the stairs of his apartment and began to walk south on the walkway towards Benson. At the same time, Benson picked up a folding chair and moved towards Hall. As Benson ran at Hall he put aside the folding chair and shoved Hall with both hands forcefully in the chest. Benson's shove made Hall lose his balance, trip over a step in the walkway and land on his back on the concrete.

Hall was knocked unconscious. As he lay there motionless Benson can be seen doing

nothing to help Hall or summon professional assistance.

Hall was taken by ambulance to the Euclid Hospital and diagnosed with acute subdural, subarachnoid and intraparenchymal hemorrhage. He was admitted to another hospital and discharged five days later.

The elements of felonious assault

As mentioned already, Benson is charged under R.C. 2903.11(A)(1). Accordingly, the state must prove beyond a reasonable doubt that Benson knowingly caused serious physical harm to Hall.

There is no question that Hall sustained serious physical harm and that Benson caused it. The statutory definition of serious physical harm at R.C. 2901.01(A)(5) includes any physical harm involving some temporary, substantial incapacity. Hall was unconscious for at least four minutes. He was taken by ambulance to one hospital and from there by helicopter to another where he was kept for five days. All of that amounts to temporary substantial incapacity and would not have happened if Benson had not slammed him onto a concrete walkway.

The heart of this case is a determination of whether Benson knowingly caused the serious physical harm. A person acts knowingly, regardless of purpose, when he is aware that his conduct will probably cause a certain result. R.C. 2901.22(B). To meet that standard here I must find beyond a reasonable doubt that Benson knew that by shoving Hall he would probably cause serious physical harm.

Benson is physically more imposing than Hall. The video shows Benson running at Hall and using both hands to violently blast Hall's chest. Although a purpose to cause harm is not an element of felonious assault – “purposely” is a more culpable criminal *mens rea* than “knowingly” – Benson clearly intended to cause injury. That intent – even though it is not an

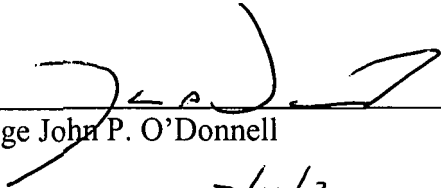
element of the crime charged – and the force of the blow, plus the fact that Benson knew Hall was on a concrete sidewalk, all combine to convince me beyond a reasonable doubt that Benson knew serious physical harm was probable even if he did not foresee exactly how the injury would be sustained.

Conclusion

For the reasons given here, I find that defendant Curtis Benson is guilty of the single count of felonious assault with which he is charged.

The defendant's bond is continued on the additional conditions that he 1) cooperate with the probation department in the preparation of a presentence investigation report under R.C. 2951.03 and 2) appear in courtroom 18-D for a sentencing hearing on August 8, 2017, at 3:00 p.m.

IT IS SO ORDERED:



Judge John P. O'Donnell

7/11/2017

SERVICE

A copy of this judgment entry was sent by email, this 11th day of July 2017, to the following:

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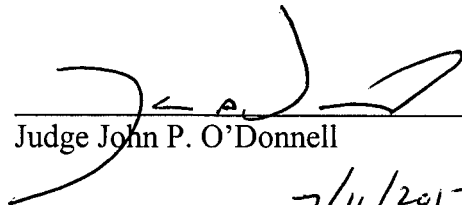
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Judge John P. O'Donnell
7/11/2017