

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

**STATE OF DELAWARE,**

Plaintiff,

v.

**DARRICK L. FISHER,**

Defendant.

**Case No.: 1707003894**

**Date Submitted: January 18, 2018**

**Date Decided: February 13, 2018**

**MEMORANDUM OPINION**

***Julie Mayers, Deputy Attorney General***  
Office of the Attorney General  
820 N. French Street, 7<sup>th</sup> floor  
Wilmington, DE 19801  
*Attorney for the State of Delaware*

***Elise K. Wolpert, Esquire***  
Eugene J. Maurer, Jr., P.A.  
1201-A King Street  
Wilmington, DE 19801  
*Attorney for Defendant*

**WELCH, J.**

## **I. Introduction.**

Trial took place in this matter on Monday, January 8, 2018 in New Castle County Court of Common Pleas at which time the Court reserved decision. Defendant was charged by Information filed by the Attorney General, two (2) Counts; one (1) Count Assault 3<sup>rd</sup> in violation of 11 *Del.C.* §611(1) and One (1) Count Criminal Mischief in violation of 11 *Del.C.* §811(a)(1) in New Castle County on July 3, 2017.

Prior to trial the State Moved into Evidence photographs of the alleged victim, numbered joint Exhibits 1-17 with no objection by the defendant. During the trial the State also moved into evidence photographs marked as State's 1 and 2 without objection. The defense moved in an additional exhibit as Defense 1 which was received and moved directly into evidence without objection by the State. This is the Court's Final Decision and Order.

## **II. The Facts.**

Jennifer Ortiz ("Ortiz"), the alleged victim was sworn and testified as part of the State's case-in-chief. Ortiz is 28 years old, lives in Wilmington, Delaware, but was originally from New Jersey. Ortiz lived at 620 W. 9<sup>th</sup> Street previously with the defendant Darrick L. Fisher ("defendant") on July 3, 2017, the date of the incident.

On July 3, 2017 both the defendant and Ortiz were at pool party in Philadelphia, Pennsylvania. The parties were drinking alcoholic beverages and got into a verbal disagreement. They returned to their place of residence set forth above at 620 W. 9<sup>th</sup> Street. Both were present approximately at the residence for 10-15 minutes watching TV when the defendant "ran down the steps" and "quickly out the door," and then drove off in his motor vehicle. Ortiz claims she exclaimed, "Where are you going?" The defendant "then peeled off" in his motor vehicle. Ortiz described the controversy as fighting over "ridiculous things." Ortiz went outside the residence to look for the defendant and found that when she returned the front door of the residence at 620

was locked. Ortiz could not enter and return into 620 W. 9<sup>th</sup> Street. Ortiz then went to the sister of the defendant's house and requested assistance. Ortiz informed her that "Darrick had locked her out of the house." Ortiz and the defendant's sister then returned to the home; stood on a box and entered into the rear of the residence. Five (5) minutes later defendant showed up and Ortiz and the defendant began arguing once again.

Ortiz claims the defendant choked her and grabbed her in the face which caused blood to protrude from her nose. Later Ortiz awoke at 3:00 AM July 4<sup>th</sup> in the morning and realized the defendant was now not in the residence. Ortiz called the defendant on her cell phone. According to her cell phone, Ortiz testified, the defendant had checked in at the Sheraton Hotel "up the street". Ortiz later learned that the defendant then changed his location by using of the location device on her cell phone indicated that the defendant was now in Newark, Delaware. Ortiz then sent the defendant an email which was marked and received into evidence as "Joint Exhibit 1."

Ortiz questioned the defendant why he left the Sheraton. Ortiz traced her phone and drove to that location in Newark. Ortiz observed the defendant's motor vehicle in front of a residential home. Ortiz pulled up and walked into the front door of the residence because she heard a "loud pinging" on her cell phone device which indicated defendant's cell phone was in this residence. A woman walked out "half-naked" past the defendant and Ortiz exclaimed "Are you kidding me?" Ortiz testified her emotions at that moment were "very high." The defendant then went to side door and exited through the car port of that residence. Ortiz exclaimed "Who is she?" The defendant allegedly then punched Ortiz in the face. Ortiz fell on the ground and dropped her cell phone. According to Ortiz, defendant then straddled her on the floor and began "punching her." Ortiz then kicked and punched him to fight back but she was being assaulted on the floor and it was "hard to defend herself". Ortiz had her arms up and pushed and straddled the

defendant in order to stop him from beating him. According to Ortiz, she asked the defendant “Why are you putting your hands on me?”

The defendant then again exited that Newark house. The defendant threw Ortiz’s cell phone down the street and yelled to Ortiz “Call the cops now”. Defendant then exited the side of his motor vehicle and allegedly slammed Ortiz’s body on the road. The defendant kept punching and kicking Ortiz on the street. Defendant then entered into his motor vehicle and drove away. Ortiz followed the defendant on I-95 and exited 7-A. The defendant traveled into the Capital Parking Garage where he worked. Ortiz followed him directly through the turn-styles. When they met again, defendant allegedly grabbed Ortiz by her arms and pulled her out the car and “began punching her”. Ortiz testified she stated “I’m going to call the cops.” The defendant then got into his motor vehicle and drove away again.

At this point, Ortiz traveled back to 620 W. 9<sup>th</sup> Street, Wilmington and called the police by dialing 9-1-1.

Ortiz’s parents picked her up four (4) hours later with a U-Haul and Ortiz moved out of the defendant’s residence at 620 W. 9<sup>th</sup> Street.

On July 5, 2017 Ortiz testified her ‘head hurt’, her “body ached”, her “eyes hurt”, her head was “pounding”, her knees and legs “hurt” and that she had a large bruise on the top of her head. Joint Exhibits 2-17 were shown to Ortiz. The summary of those exhibits is outlined below.<sup>1</sup>

---

<sup>1</sup> According to Ortiz, Joint Exhibit 1 shows cuts and bruises on Ortiz’s neck; Joint Exhibit 2 showed the bump on Ortiz’s head; cuts and bruises on her ear were depicted in Joint Exhibit 3; Joint Exhibit 4 depicted the injuries were on her head above her ear and you could see a mark on her head which was bloody, cut and bruised; Joint Exhibit 5 showed dark bruises on her left arm and below; Joint Exhibit 6 shows the bruises on the side of her arm where defendant allegedly grabbed her; Joint Exhibit 7 shows the bruises on the back of her arm; Joint Exhibit 8 shows the cuts on her arm and a scratch; Joint Exhibit 9 was a big bruise on her back; Joint Exhibit 10 showed additional bruises; Joint Exhibit 11 shows the bruise on her neck from allegedly being kicked by the defendant; Joint Exhibit 12 were bruises on her legs and knees.

Ortiz sought medical treatment due to the tender spot on her head. A Wilmington Police Department female police officer took the pictures previously marked joint Exhibit 1-18. Ortiz testified she had “constant migraines” and “pressure on the top of her head”; her “knees hurt” and her hip was “throbbing”. According to Ortiz, none of these bruises were present prior to the night in question when the defendant subsequently allegedly punched and assaulted her.

Ortiz testified she then drove to New Jersey because she was embarrassed to go to the Wilmington Hospital because she “worked there.” Ortiz was subsequently examined by a nurse in New Jersey.

On cross-examination Defense counsel presented to Ortiz Defendant’s Exhibit 1, which was moved into evidence. It is a photo taken of Ortiz on July 6, 2017, which included her face which the defense contends indicated there were no bruises or marks on her face.

On cross-examination, Ortiz testified she and the defendant were drinking at the pool party. Ortiz testified defendant’s sister helped her “break into the home” to get her property and the defendant, when he subsequently arrived stated “I don’t need this anymore.” Ortiz admitted she grabbed the defendant to prevent him from leaving the residence. Ortiz also agreed she sent an email to the defendant that stated “Thank you, you piece of shit.” The email also indicated, “I will be there bright and early in the morning.” Ortiz, according to the defendant, called the Sheraton at 3:00 AM and kept following the defendant throughout the entire night. Ortiz conceded her emotions “were high” when she arrived at the Newark house and saw the “other woman”. Ortiz also testified the defendant punched her in the face with a closed fist and then she told him “I’m calling the cops.” Ortiz also testified on cross-examination that she moved out on July 4, 2017 with assistance from her mom and sister using a rented U-Haul.

On redirect examination, Ortiz testified Defense Exhibit 1 has a “poor shade” and the photograph didn’t show the actual physical marks on her face.

Officer Dominic Brown (“Officer Brown”) was sworn and testified. Officer Brown is a Wilmington Police officer who has been employed for three (3) years with the Wilmington Police Department. Officer Brown has been in the particular Enforcement Unit for seven (7) years with the Wilmington Police Department. She handles domestic incidents and criminal complaints. On July 6, 2017 Officer Brown was working when Ortiz came into the Wilmington Police Station. He interviewed Ortiz. Ms. Ortiz was then photographed by a female police officer in accordance with Wilmington Police Department policy. Officer Brown subsequently complied a police report and a female police officer, Officer Mobley, actually took the photos of Ortiz. According to Officer Brown, Ortiz freely spoke with him and explained what happened during the evening. Officer Brown testified that had he known that many of the events occurred in question outside Wilmington, he believed matter would have been within the Delaware State Police jurisdiction or New Castle County Police.

On cross-examination Officer Brown testified he completed the Police Report and Officer Mobley took the photographs at approximately 9:30 on July 6, 2017. According to Officer Brown, defendant punched Ortiz with a closed fist. He was told it was disputed verbal disagreement that ended up in actual violence between the parties.

On redirect examination, Officer Brown testified Ortiz was in a “very emotional” and “irate” and that “a lot was going on.” Officer Brown also indicated Ortiz was “very emotional” when she entered into the police station on July 6, 2017.

Officer Rita Mobley (“Officer Mobley”) was sworn and testified. Officer Mobley is with the Wilmington Police and took the photographs of Ortiz numbered State’s 1-17. Officer Mobley’s duties include patrol and investigating domestic complaints. Officer Mobley has with the Wilmington Police Department for two (2) years. On July 6, 2107 Ortiz came in contact with

Officer Mobley and Officer Brown. Officer Mobley observed Ortiz's scalp, which had dried blood on Ortiz's head as well as the other bumps and bruises throughout Ortiz's body.<sup>2</sup>

On redirect Officer Mobley testified she took the seventeen (17) photos.

Defense presented its case-in-chief. Ciera Fisher ("Ms. Fisher") was sworn and testified. Ms. Fisher resides at 505 West 9<sup>th</sup> Street, one half block from the defendant's house. She is the sister of the defendant. Ms. Fisher realized Ortiz is defendant's ex-girlfriend. Ms. Fisher claims she did not actually assist Ortiz enter 621 W. 9<sup>th</sup> Street and that Ortiz "ran up and talked to her" on the night in question and told her that the defendant had locked her out of the house.

The defendant's sister used her phone to text the defendant and texted "This is your sister, please call me." The defendant texted her back. She told the defendant that Ortiz told her she was locked out of the house. The defendant said "She's lying; she already in the house."<sup>3</sup> According to Ms. Fisher, defendant said Ortiz was not locked out and was lying when he spoke to the Ms. Fisher. According to Ms. Fisher, she did not offer any assistance nor help Ortiz get into the house. On cross-examination Ms. Fisher also testified that she is the defendant's sister, but she does not believe in domestic violence. Ms. Fisher was unaware of any conflict in the relationship or anger issues between Ortiz and the defendant because she never sees Ortiz or the defendant.

Darrick Fisher ("defendant") was sworn and testified. The defendant is employed by Capital One. He had a relationship with Ms. Ortiz and he recalls the incidents on July 3, 2017. He testified he was at a pool party in Philadelphia, left and came back and left the residence because he wanted to get away from Ortiz. According to the defendant, Ortiz asked him "Where did you go?" The defendant reiterated the words to the effect that he "had enough" and ran out

---

<sup>2</sup> The photographs marked Joint Exhibits 2-17 and State's Exhibit 1 and 2 were reviewed and according to the officer they showed lacerations in the neck, ear and arms bruising, back bruising, torso and knees bruising and dried blood on the head and Ortiz had suffered head wounds.

of the house. Later that evening the defendant then pulled out of his garage at 620 W. 9<sup>th</sup> Street a second time and at 10:35 PM on July 3<sup>rd</sup> checked into a hotel. On July 5, 2017 he checked out and went to a friend's house when Ortiz showed up. He left the Sheraton to "be with a friend," Amy Phillips in Newark, and heard a strong banging on the front door of that residence. His cell phone was beeping. Ortiz approached the defendant and he told her "this has nothing to do with you". He testified Ortiz was "very upset" and would not leave the house. He eventually left the residence and ended up, as Ortiz said, inside the Capital Parking Garage. He denies he struck or assaulted Ortiz at any time during the evening in question.

A video was shown into evidence from Capital One Parking Lot where he argued with Ortiz about a rock and told her "You're going to hit my car with a rock".

On cross-examination the defendant testified he never actually hit or struck Ortiz during the entire sequence of events on the evening in question. According to the defendant Ortiz kept following him throughout the residence and throughout the evening. The defendant claimed Ortiz is not telling the truth. The defendant admits he threw Ortiz's cell phone down the street and that he previously bought the cell phone for Ortiz.

### **III. The Law.**

The State has a burden of proving each and every element of these offenses beyond a reasonable doubt. 11 Del. C. § 301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965).

As established case law indicates, a reasonable doubt is not a vague, whimsical or merely possible doubt, "but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscious consideration of the case. *Matushefske*.

---

<sup>3</sup> Copies of the text messages were received into evidence by the defense and marked 3 and 4.



A reasonable doubt “means a substantial, well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.” *State v. Wright*, Del. Gen. Sess., 79 A.2d 399 (1911).

The State also has the burden of proof beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 Del. C. § 232. *James v. State*, Del. Supr., 377 A.2d 15 (1977). *Thornton v. State*, Del. Supr., 405 A.2d 126 (1979).

Delaware law defines the offense of Assault Third Degree, in pertinent part, as follows:

A person is guilty of Assault in the Third Degree when:

[ (2) He intentionally or recklessly causes physical injury to another person . . . ]

In order to find the defendant guilty of Assault Third Degree, you must find that all of the following elements have been established beyond a reasonable doubt:

1. The defendant caused physical injury to the alleged victim. “Physical injury” means impairment of physical condition or substantial pain; AND
2. The defendant acted intentionally. That is, it was the defendant’s conscious object to engage in the conduct of that nature or purpose to cause physical injury to another person.
3. or the defendant acted recklessly.<sup>4</sup>

In determining whether the State has met its burden of proving each and every element of these offense(s) beyond a reasonable doubt as required by 11 Del. C. § 301, the Court may consider all direct and circumstantial evidence.

The Court as trier of fact is the sole judge of the credibility of each fact witness.

---

<sup>4</sup> Pursuant to 11 *Del. C.* §231(e) “A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.”

If the Court finds the evidence presented to be in conflict, it is the Court's duty to reconcile these conflicts, if reasonably possible, so as to make one harmonious story of it all.

If the Court cannot do this, the Court must give credit to that portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony which in the Court's judgment is unworthy of credit.

In doing so, the Court takes into consideration the demeanor of the witness, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest that they may have concerning the nature of the case.

Defendant has/has not raised the claim of self-defense. 11 *Del. C.* §464 provides, *inter alia*, that "[t]he use of force upon or towards another person is justifiable when the defendant believes such force is immediately necessary for the purpose of protecting the defendant against the use of unlawful force by the other person on the present occasion." Subparagraph (b) allows such "person employing protective force may estimate the necessity thereof under the circumstances as a person believes them to be when the force is used, without treating, surrendering possession, doing any other act which the person has no legal duty to do or abstain from any lawful action." 11 *Del.C.* §464. This law is helpful in interpreting the evidence presented at trial because physical injury to Ortiz was proven by 11 *Del.C.* §301 and the defendant testified all of Ortiz's claims simply did not happen. The defendant did not testify that the bruises on Ortiz occurred when she was fighting with him and that he was merely defending himself. The defendant's position is that he never inflicted such injuries on Ortiz as depicted in State's Exhibits Nos 1-17 and that Ortiz is simply lying.

Delaware law defines Criminal Mischief as follows:

(a) A person is guilty of criminal mischief when the person intentionally or recklessly:

(1) Damages tangible property of another person; or

(2) Tampers with tangible property of another person so as to endanger person or property; or

(3) Tampers or makes connection with tangible property of a gas, electric, steam or waterworks corporation, telegraph or telephone corporation or other public utility, except that in any prosecution under this subsection it is an affirmative defense that the accused engaged in the conduct charged to constitute an offense for a lawful purpose.

(b) Criminal mischief is punished as follows:

(2) Criminal mischief is a class A misdemeanor if the actor intentionally or recklessly causes pecuniary loss in excess of \$1,000;

\* \* \*

(3) Otherwise criminal mischief is an unclassified misdemeanor;

\* \* \*

(c) It is a defense that the defendant has a reasonable ground to believe that the defendant has a right to engage in the conduct set forth in subsection (a) of this section.

In order to find the defendant guilty of Criminal Mischief, the Court must find that all of the following elements have been established beyond a reasonable doubt. 11 *Del.C.* §301<sup>5</sup>

1. The defendant damages the personal property of another person, or tampers with the tangible property of another person so as to endanger person or property; or tampers or makes

---

<sup>5</sup> *State v. Matushefske*, Del.Supr., 215 a.2d 443 (1965).

connection with tangible property of gas, electric, steam or waterworks corporation, telegraph or telephone corporation or other utility, the damage resulting in less \$1,500 loss; AND

2. The defendant did so recklessly or intentionally. A person acts recklessly when the person is aware of and consciously disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person observes in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto. A person acts intentionally, where it is their conscious object to engage in conduct of that nature or to cause that result.

#### **IV. Discussion.**

It is clear in the trial record that Ortiz suffered physical injury within the meaning of 11 *Del.C.* §611 throughout her person, body, legs, back and head. This case depends on a credibility finding by the Court as set forth in the above instruction as to whether the Court believes Ortiz or the defendant intentionally or recklessly caused Ortiz physical injuries.<sup>6</sup> It is clear that the Ortiz followed the defendant throughout the evening on the dates outlined in her testimony. However, the Court finds this is not a blanket permission, nor consent, to be physically assaulted within the meaning of 11 *Del.C.* §611. As set forth in Joint Exhibits 1-17 in fact, the factual issue is whether Ortiz sustained all of these physical injuries depicted in these exhibits on the date in question as actually inflicted by the defendant either recklessly or intentionally. Ortiz testified

she had no physical injuries prior to incidents on the night in question. The defendant completely denies inflicting any injuries were in fact, on Ortiz. Applying the credibility instruction, the Court finds that Ortiz was very credible at trial and finds the defendant's testimony, that he did not, in fact, cause these injuries simply not credible. The pictures and testimony at trial clearly beyond a reasonable doubt, 11 *Del.C.* §301, that the defendant, in fact, inflicted these injuries on Ortiz.

The Court carefully scrutinized the defendant's testimony and his demeanor on the witness stand. Applying the balancing test set forth above in the Law Section and the State's burden of proof, 11 *Del.C.* §301, the Court finds Ortiz was much more credible. The defendant's blanket denial of even striking or hitting or assaulting Ortiz is simply not believable. Nor did the defendant raise self-defense. The testimony and photographs depict the injuries suffered by Ortiz were done by the defendant. Ortiz's testimony set forth with specificity all the injuries depicted in the photographs and finds her testimony credible that defendant intentionally or recklessly caused all those physical injuries. Ortiz made contemporaneous statements during the night in question directly to the defendant when the defendant was actually inflicting her injuries, such as "Why do you place your hands on me?" and "I will call the police." Clearly Ortiz suffered impairment of physical condition and substantial pain.

With regards to the criminal mischief charge, it is clear that the defense essentially conceded the charges were proven in their closing statement. It is clear that the elements of criminal mischief set forth above were met at trial by the State beyond a reasonable doubt. 11*Del.C.* §811. The fact that the defendant allegedly bought and gave Ortiz the phone did not give him permission to throw it and destroy it as it was her personal property. He did not testify

---

<sup>6</sup> 11 *Del.C.* §611(a)(2).

at trial that he had a scintilla of a claim of right of ownership of the cell phone. The elements of this charge at trial was clearly proven beyond a reasonable doubt, 11 *Del.C.* §311.

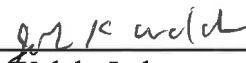
Before closing the Court notes this is a clear case of domestic violence. Just because the alleged victim, Ortiz, followed the defendant through the sequence of events did not, in fact, give the defendant blanket permission to assault Ortiz or destroy her cell phone. Much of Ortiz's testimony were present sense impression such as "Why did you put your hands on me?" The defendant "I am calling the police" the defendant's remedy was to call law enforcement, not physically assault Ortiz or destroy her cell phone.

#### **V. Opinion and Order**

The Court therefore adjudicates the defendant guilty of both the Assault 3<sup>rd</sup> and Criminal Mischief as set forth in the Information.

This matter shall be set for sentencing with notice to counsel of record at the earliest convenience of the Court.

**IT IS SO ORDERED** this 13<sup>th</sup> day of February, 2018.

  
\_\_\_\_\_  
John K. Welch, Judge

/jb

cc: Ms. Tina Smith, Judicial Case Manager II