

PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Commonwealth of Pennsylvania v. Jabril Lee, Rangos, J.Page 57
Criminal Appeal—Grand Jury—Secrecy—Nolle Prose—Disclosure of Grand Jury materials in civil litigation
Is a civil litigant entitled to Grand Jury materials for use in a lawsuit against the arresting agency where the litigant's underlying criminal charges were nolle prossed by the Commonwealth?

Commonwealth of Pennsylvania v. Theodore Rogers, Lazzara, J.Page 58
Criminal Appeal—Sufficiency of Evidence—Self-Defense—Provoking Incident—Defiant Trespasser—Mutual Combat
Was the evidence sufficient to convict defendant of Simple Assault where defendant struck a restaurant manager after refusing to leave for violating the restaurant's mask policy?

PLJ

The Pittsburgh Legal Journal Opinions are published fortnightly by the Allegheny County Bar Association
400 Koppers Building
Pittsburgh, Pennsylvania 15219
412-261-6255
www.acba.org
© Allegheny County Bar Association 2022
Circulation 5,393

PLJ EDITORIAL STAFF

Erin Lucas Hamilton, Esq.Editor-in-Chief & Chairman
David A. BlanerSupervising Editor
Jennifer A. Pulice, Esq.Consulting Editor
Sharon AntillTypesetter/Layout

SECTION EDITORS

Civil Litigation: Gina Zumpella
Family Division:
 Dawn Gull
 Sally Miller
Probate and Trust Co-Editors:
 Carol Sikov Gross
 Daniel A. Seibel
Real Property: Ken Yarsky

CIVIL LITIGATION OPINIONS COMMITTEE

Sheila Burke
Kevin Eddy
Mike Feeney
Christina Roseman
Jonathan Skowron
Gina Zumpella
Tom Zumpella

CRIMINAL LITIGATION OPINIONS COMMITTEE

Patrick Nightingale
Justin Okun
Lisle Weaver

FAMILY LAW OPINIONS COMMITTEE

Mark Alberts
Christine Gale
Mark Greenblatt
Margaret P. Joy
Patricia G. Miller
Sally R. Miller
Sophia P. Paul
David S. Pollock
Sharon M. Profeta
Hilary A. Spatz
Mike Steger
William L. Steiner

ORPHANS' COURT OPINIONS COMMITTEE

Nathan Catanese
Aubrey Glover
Natalia Holliday
Deborah Little

OPINION SELECTION POLICY

Opinions selected for publication are based upon precedential value or clarification of the law. Opinions are selected by the Opinion Editor and/or committees in a specific practice area. An opinion may also be published upon the specific request of a judge.

Opinions deemed appropriate for publication are not disqualified because of the identity, profession or community status of the litigant. All opinions submitted to the Pittsburgh Legal Journal (PLJ) are printed as they are received and will only be disqualified or altered by Order of Court, except it is the express policy of the Pittsburgh Legal Journal (PLJ) not to publish the names of juveniles in cases involving sexual or physical abuse and names of sexual assault victims or relatives whose names could be used to identify such victims.

OPINIONS

The Pittsburgh Legal Journal provides the ACBA members with timely, precedent-setting, full text opinions, from various divisions of the Court of Common Pleas. These opinions can be viewed in a searchable format on the ACBA website, www.acba.org.

**Commonwealth of Pennsylvania v.
Jabril Lee**

Criminal Appeal—Grand Jury—Secrecy—Nolle Prosses—Disclosure of Grand Jury materials in civil litigation

Is a civil litigant entitled to Grand Jury materials for use in a lawsuit against the arresting agency where the litigant's underlying criminal charges were nolle prossed by the Commonwealth?

No. CP-02-CR-07811-2018. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Rangos, J.—February 8, 2022.

OPINION

On June 13, 2018, City of Pittsburgh Police Department filed charges against Appellant, Jabril Lee, and three other individuals as a result of an incident in which three juveniles were shot. The case proceeded to an indicting grand jury upon a finding that witness intimidation either had occurred or was likely to occur. Charges were filed on June 13, 2018. On September 25, 2019, the Commonwealth nolle prossed the case against all four defendants. On June 11, 2020, Appellant filed a Praecipe for Writ of Summons in the civil division of the Court of Common Pleas, listing the City of Pittsburgh and the Allegheny County Office of the District Attorney among the defendants. Next, Appellant, on September 27, 2021, filed a Motion seeking disclosure of all grand jury material relative to the criminal investigation. This Court denied the Motion on October 18, 2021. Appellant filed a Notice of Appeal on November 17, 2021, and a Concise Statement on December 22, 2021.

ERRORS COMPLAINED OF ON APPEAL

Appellant alleges this Court erred in denying his Motion for Disclosure of grand jury materials because the Court's ruling was "a misapplication of the rules, statutes, case law and provisions" governing Grand Jury protections and "in contrast to its intent." (Statement of Errors to be Raised on Appeal, p. 2).

DISCUSSION

Appellant asserts that this Court misapplied the rules regarding Grand Jury secrecy. The disclosure of grand jury materials is governed by Pa.R.Crim.Pro. 556.10, which states:

Rule 556.10. Secrecy; Disclosure

(B) Disclosure. No person may disclose any matter occurring before the grand jury, except as provided below.

(1) Attorney for the Commonwealth. Upon receipt of the certified transcript of the proceedings before the indicting grand jury, the supervising judge shall furnish a copy of the transcript to the attorney for the Commonwealth for use in the performance of official duties.

(2) Defendant in a Criminal Case. If a defendant in a criminal case has testified before the indicting grand jury concerning the subject matter of the charges against him or her, upon application of such defendant, the supervising judge shall order that the defendant be furnished with a copy of the transcript of such testimony.

(3) Witnesses

(a) A grand jury witness may disclose his or her testimony unless the attorney for the Commonwealth obtains an order from the supervising judge that the interests of justice dictate otherwise.

(b) The attorney for the Commonwealth may request that the supervising judge delay the disclosure of a grand jury witness' testimony, but such delay in disclosure shall not be later than the conclusion of direct testimony of that witness at trial.

(4) Other Disclosures:

(a) Disclosure of grand jury material or matters, other than the grand jury's deliberations and the vote of individual jurors, may be made to any law enforcement personnel that an attorney for the Commonwealth considers necessary to assist in the enforcement of the criminal law.

(b) Upon motion, and after a hearing into relevancy, the supervising judge may order that a transcript of testimony before an indicting grand jury, or physical evidence before the indicting grand jury, may be released to an investigative agency under such conditions as the supervising judge may impose.

(5) Pretrial Discovery. Pretrial discovery in cases indicted by a grand jury is subject to Rule 573. Pretrial discovery does not include testimony or other evidence that would disclose the identity of any witness or victim who has been intimidated, is being intimidated, or who is likely to be intimidated. Disclosure of such testimony or other evidence shall be only as ordered by the supervising judge.

Pa.R.Crim.Pro. 556.10 (B).

Since the charges against Appellant have been nolle prossed, he no longer qualifies as a "Defendant in a Criminal Case" and subsection 556.10 (B) (2) does not apply to him. Likewise, Appellant is neither "law enforcement personnel" or "an investigating agency," so subsection 556.10 (B) (4) does not apply.

In Pennsylvania, grand jury proceedings have traditionally been conducted in secrecy, and for a salutary reason. The secrecy of grand jury proceedings is "indispensable to the effective functioning of a grand jury." In re Investigating Grand Jury of Philadelphia Co. (Appeal of Philadelphia Rust Proof Company), 496 Pa. 452, 437 A.2d 1128, 1130 (1981). The grand jury serves multiple critical purposes:

(1) [t]o prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before grand jury

and later appear at the trial of those indicted by it; (4) to encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes; (5) to protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.

Id.; Accord *Pirillo v. Takiff*, 462 Pa. 511, 341 A.2d 896, 905 (1975) (“The secrecy surrounding grand jury proceedings is a mechanism to ensure the safety and reputation of witnesses and grand jurors.”)

In re *Dauphin Cty. Fourth Investigating Grand Jury*, 19 A.3d 491, 502–03 (Pa. 2011). This Court correctly applied the letter and spirit of the Grand Jury rules in denying Appellant’s Motion for Disclosure.

CONCLUSION

For all the above reasons, no reversible error occurred, and the findings and rulings of this Court should be AFFIRMED.

BY THE COURT:

/s/Rangos, J.

Date: February 8, 2022

Commonwealth of Pennsylvania v. Theodore Rogers

Criminal Appeal—Sufficiency of Evidence—Self-Defense—Provoking Incident—Defiant Trespasser—Mutual Combat

Was the evidence sufficient to convict defendant of Simple Assault where defendant struck a restaurant manager after refusing to leave for violating the restaurant’s mask policy?

No. CC 2020-6040. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Lazzara, J.—February 2, 2022.

OPINION

This is a direct appeal from the judgment of sentence entered on September 21, 2021, following a non-jury trial that took place on March 10, 2021. The Defendant was convicted of Simple Assault, Defiant Trespass, Harassment, and Disorderly Conduct. Sentencing was deferred to allow for the preparation of a Presentence Report.

On September 21, 2021, the Defendant was sentenced to 11 months and 5 days to 23 months of imprisonment at the Simple Assault conviction. No further penalty was imposed at the remaining counts of conviction. A No Contact Order was imposed, prohibiting the Defendant from having contact with the victim, Andrew Craig, and the Hello Bistro restaurant.

This timely appeal followed. On November 19, 2021, the Defendant filed a timely Concise Statement raising the following allegations of error on appeal:

- a. The evidence was insufficient to sustain the conviction at Count 1- Simple Assault. The evidence established that Mr. Rogers acted in self-defense when he pushed Andrew Craig, who had shoved him first. The use of force that Mr. Rogers displayed was a justifiable form of protection under these circumstances.
- b. In the alternative, the evidence was insufficient to sustain the conviction at Count 1 – Simple Assault at the second-degree misdemeanor level. The evidence established that the offense was committed “in a fight or scuffle entered into by mutual consent,” meaning that a third-degree misdemeanor grading was required. 18 Pa. C.S.A. § 2701(b)(1).

(Concise Statement, ¶ 6).

The Defendant’s contentions lack merit. This court respectfully requests that the Defendant’s conviction be upheld for the reasons that follow.

I. FACTUAL BACKGROUND

The evidence viewed in the light most favorable to the Commonwealth establishes that, on July 3, 2020, the Defendant entered the Hello Bistro restaurant on Forbes Avenue and Wood Street without wearing a mask, in violation of the restaurant’s pandemic mask policy at the time. (Non-Jury Trial Transcript (“TT”), held 3/10/21, pp. 49-51). Andrew Craig, the restaurant’s general manager, informed the Defendant of the mask policy and told the Defendant that he would have to leave the restaurant if he did not wear a mask. (TT, pp. 48-50, 52). The Defendant nevertheless “refused to put a mask on.” (TT, p. 50). Mr. Craig informed the Defendant that he was going to call the police if the Defendant did not put a mask on or leave the restaurant. (TT, pp. 51-51). The Defendant said to “go ahead” and “call the police” because he was not leaving. (TT, p. 51). Mr. Craig turned to his shift manager who was in the kitchen and said, “if he does not leave, go ahead and call the police.” (TT, p. 51).

The Defendant began “yelling obscenities at the shift manager, calling him a fag” and swearing at both the shift manager and Mr. Craig. (TT, p. 51, 56). The Defendant then attempted to come behind the line that denoted the employee only area. (TT, pp. 52-53, 58). As he approached the cash register, he stated that he was “going to get his money out of the register.” (TT, pp. 52-53, 58). Mr. Craig pushed the Defendant back to prevent him from entering the unauthorized area and accessing the cash register, and the Defendant pushed him back. (TT, pp. 52-53, 58). Mr. Craig told the Defendant that he was not permitted behind the line, and Mr. Craig testified that he “was emphatically telling him (the Defendant) to leave.” (TT, pp. 53-54, 56).

The Defendant remained in the restaurant despite Mr. Craig asking him multiple times to leave, so the police were notified. (TT, pp. 53, 59). Mr. Craig continued trying to get the Defendant to leave while also trying to stall until the authorities arrived. (TT, p. 54). In his effort to stall, Mr. Craig retained possession of the Defendant’s water bottle. (TT, pp. 58-59). At one point, Mr. Craig placed his hand on the Defendant’s back as he was trying to calm him down and get him to exit the store. (TT, pp. 59-60). The Defendant refused to leave the restaurant, stating to Mr. Craig at some point during the confrontation that he wanted his money back, although he had not ordered anything. (TT, p. 54). At another point, the Defendant told Mr. Craig that he was going to make

his own salad, which is not the restaurant's model. (Staff makes salads based on customer selections). Mr. Craig told the Defendant that he could not make his own salad and that he had to leave the premises. (TT, p. 54).

As Mr. Craig continued waiting for police to arrive, the Defendant tried for a second time to enter the unauthorized area behind the line. (TT, pp. 54, 58-59). The Defendant "ended up bumping chests" with Mr. Craig at this point because Mr. Craig "wasn't letting him get past me down my line there." (TT, pp. 54, 58, 60). While "mutual contact" was made initially with the chest bumping, the Defendant then punched Mr. Craig in the arm with a "closed fist." (TT, pp. 54-55, 60). Mr. Craig "swung back and hit [the Defendant] in the stomach." (TT, pp. 54-55, 60). The Defendant "swung" at Mr. Craig's head, leading Mr. Craig to duck and turn away. (TT, p. 54). As Mr. Craig was ducking and turning, the Defendant grabbed him and pulled him down, twisting him in such a way that he injured Mr. Craig's knee as a result. (TT, pp. 47-48, 54-55). Mr. Craig sought medical attention at the time of the injury, and, at the time of trial, he was still experiencing pain from the injury and required the assistance of a knee brace. (TT, p. 55).

II. DISCUSSION

A. The evidence presented at trial was sufficient to support the Defendant's conviction for Simple Assault because the evidence did not support a finding that the Defendant acted in self-defense.

The appellate court employs a *de novo* standard of review for challenges to the sufficiency of evidence. *Commonwealth v. Neysmith*, --- A.3d ---, 2018 WL 3153691, at *4 (Pa. Super. 2018). Our appellate courts have explained this standard as follows:

[O]ur standard of review of sufficiency claims requires that we evaluate the record "in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." *Commonwealth v. Widmer*, 744 A.2d 745, 751 (Pa. 2000). "Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt." *Commonwealth v. Brewer*, 876 A.2d 1029, 1032 (Pa. Super. 2005). Nevertheless, "the Commonwealth need not establish guilt to a mathematical certainty." *Id.*; see also *Commonwealth v. Aguado*, 760 A.2d 1181, 1185 (Pa. Super. 2000) ("[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence"). Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. See *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001).

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. See *Brewer*, 876 A.2d at 1032. Accordingly, "[t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence." *Id.* (quoting *Commonwealth v. Murphy*, 795 A.2d 1025, 1038-39 (Pa. Super. 2002)). Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld. See *Brewer*, 876 A.2d at 1032. *Commonwealth v. Rahman*, 75 A.3d 497, 500-01 (Pa. Super. 2013) (quoting *Commonwealth v. Pettyjohn*, 64 A.3d 1072 (Pa. Super. 2013)) (citations omitted).

It is clear that "the evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented." *Commonwealth v. Brown*, 52 A.3d 320, 323 (Pa. Super. 2012). "Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail." *Id.* at 323.

In his first claim, the Defendant contends that this court erred when it found the evidence sufficient to support a simple assault conviction because he was acting in self-defense when he "pushed Andrew Craig, who had shoved him first." (Concise Statement, ¶ 6).

In order to sustain its burden of proof for a simple assault, the Commonwealth must show that the Defendant "attempt[ed] to cause or intentionally, knowingly or recklessly cause[d] bodily injury to another." 18 Pa. C.S.A. § 2701(a)(1). "Bodily injury" is defined as "[i]mpairment of physical condition or substantial pain." 18 Pa. C.S.A. § 2301.

Evidence Failed to Support Self-Defense Finding

Here, there is no question that a simple assault occurred. The Defendant punched Mr. Craig, then grabbed and pulled him down to the ground in such a way that he caused a knee injury that is still causing Mr. Craig pain. The issue is whether that assault was justified by the self-defense doctrine. The evidence viewed in the light most favorable to the Commonwealth, and all the reasonable inferences that can be drawn from that evidence, squarely establishes that the Defendant was not acting in self-defense when he punched Mr. Craig.

To be clear, the evidence established that there were two (2) separate instances of physical contact between the Defendant and Mr. Craig. The first occurred when the Defendant initially attempted to go behind the line and access the cash register. (TT, p. 58). Mr. Craig pushed the Defendant away from the line at that point, and the Defendant responded by pushing him back. (TT, p. 58). However, contrary to the Defendant's assertion in the Concise Statement, the simple assault charge was not based on that one simple push.

Rather, the charge was borne out of the Defendant's actions during the second episode, where he tried for a second time to enter into the unauthorized area behind the line. (TT, pp. 54, 58, 75). It was at this point that Mr. Craig chest bumped him to prevent him from entering the area. (TT, pp. 54, 58). Instead of walking away and heeding Mr. Craig's numerous requests to leave the restaurant, the Defendant punched him with a closed fist. (TT, pp. 54-55, 58). At that point, the Defendant became the aggressor and provoked the attack while violating his duty to retreat,¹ thereby extinguishing any claim of self-defense. *Commonwealth v. Smith*, 97 A.3d 782 (Pa. Super. 2014); 18 Pa. C. S. A. § 505(b).

Moreover, setting aside the fact that it was wholly unnecessary for the Defendant to use any amount of force in response to the chest bump, his closed fist punch was an unreasonable amount of force to employ in response to Mr. Craig's actions since Mr. Craig was not threatening an attack. See *Commonwealth v. Pollino*, 467 A.2d 1298, 1301 (Pa. 1983) ("[F]orce may be met with force so long as it is only force enough to repel the attack.").

Mr. Craig's chest bump was not meant to harm the Defendant or cause him to fear for his safety. As the general manager of the restaurant, Mr. Craig was trying to prevent the Defendant from entering a prohibited area after repeatedly telling the Defendant that he was not permitted to enter that area and after repeatedly asking the Defendant to leave the restaurant for his refusal to wear a mask in violation of the restaurant's pandemic policy. Any reasonable person in the Defendant's shoes would have taken the chest bump to mean that he needed to back off from his attempt to access the area behind the line, and not as a statement that physical harm was being threatened or that an attack was imminent.

Given the overall context in which the chest bump took place and considering that it was a lesser form of contact than the initial push Mr. Craig employed the first time the Defendant tried to get behind the line, the Defendant could not reasonably have believed that he was in danger when he escalated the situation by punching Mr. Craig. It is also worth noting that Defendant's use of force was employed during a time that the Defendant's status at the restaurant was that of a trespasser since he had been asked to leave numerous times before he punched Mr. Craig. Accordingly, since the Defendant escalated the situation, provoked the attack, failed to retreat despite his ability to do so with complete safety, and used an unreasonable amount of force, the evidence was sufficient to establish beyond a reasonable doubt that the Defendant did not act in self-defense.

B. The evidence was sufficient to prove a Misdemeanor 2-Simple Assault and did not support a finding of Mutual Combat.

In his second, alternative claim, the Defendant contends that the evidence established a mutual combat situation that warranted lowering the grading of the conviction to misdemeanor in the third-degree. The court disagrees.

Pursuant to § 2701(b)(1), a simple assault is a misdemeanor of the second degree unless committed "in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree." As explained by the Pennsylvania Commonwealth Court,

[a] fight or scuffle upon mutual consent is one in which "both of the parties engaged in the fighting mutually, both desiring to do so." Pa. SSJI (Crim) § 15.2701E. A determination that an actor engaged in a fight or scuffle by mutual consent "make[s] the assault ... a less serious offense than it might otherwise have been." Id. While not supportive of a peaceful society, the mutuality of the undertaking moderates the opprobrium attached to the act.

Bowalick v. Commonwealth, 840 A.2d 519 (Pa. Comm. Ct. 2004) (emphasis added). "Mutual combat infers that both parties 'agreed' to fight and that there was no aggressor." *Commonwealth v. Cannon*, 563 A.2d 918 (Pa. Super. 1989) (citing *Commonwealth v. Coleman*, 496 A.2d 1207 (Pa. Super. 1985) (wherein evidence that the victim got out of his car, charged the defendant and a fight ensued, but there was no clear evidence of who threw the first punch supported inference that fight was entered into by mutual consent.) (emphasis added).

The court in *Commonwealth v. Percha*, 2020 WL 5036431, at *5 (Pa. Super. 2020), refused to find a mutual combat situation where the defendant "was in an unauthorized area of the prison, refused to comply with a valid order from [the prison guard] and then, when [the guard] was attempting to place [the defendant] into custody for violating prison regulations, [the defendant] punched [the guard] in his left temple." The court held that there was "simply no evidence that 'this was a case of mutual combat where [] both [the defendant] and the prison guard each decided to fight on their own accord.'" Id. Rather, when viewed in the light most favorable to the Commonwealth, "the evidence demonstrate[d] that the [defendant] was the aggressor" in the case. Id.

Here, when viewed in the light most favorable to the Commonwealth, the evidence established that the Defendant was the aggressor and that this was not a situation where the Defendant and the victim "each decided to fight on their own accord." *Percha*, supra, at *5. While this case did not involve the violation of institutional policies by an inmate, *Percha* is analogous insofar as it involved a defendant's violation of a private business's mask policy and whose substantial resistance and repeated non-compliance escalated the situation to the point that a physical altercation ensued. As recounted earlier, that physical altercation was provoked by the Defendant's closed fist punch. While "mutual contact" was made when Mr. Craig chest bumped the Defendant after his second attempt to enter the unauthorized area, this was not an invitation to engage in a mutual scuffle; rather, it was simply Mr. Craig trying to defend the employee area and prevent the Defendant from accessing a prohibited area.

Against this backdrop, the evidence viewed in the light most favorable to the Commonwealth established beyond a reasonable doubt that the Defendant, intentionally, or at the very least recklessly, caused bodily injury to Andrew Craig, and that the injury was not a result of a mutual scuffle that was consented to by the parties. This court sat as the factfinder during trial, and, as such, the issue of credibility was solely for this court to resolve. After carefully studying the tone and demeanor of the witnesses, and watching the video evidence, the court found that the testimony of Andrew Craig was compelling, consistent, and carried with it the "ring of truth."

The Defendant took the stand at trial and offered a different account of the events of that day. (TT, pp. 67-81). However, this court did not find the Defendant's testimony to be credible. For example, this court did not believe the Defendant's claim that he did not punch Mr. Craig. (TT, p. 77). The Defendant testified, "I don't think I ever swung at him. I think I just slammed him to the ground, pushed him to the ground a little bit because he was hurting me." (TT, pp. 77-78).

This court was free to believe all, part, or none of the evidence, and this court found that Mr. Craig's testimony set forth the credible account of events, which did not support a finding of mutual combat.

III. CONCLUSION

The Defendant's allegations of error on appeal are without merit. Based on the foregoing, sufficient evidence was presented to support the Defendant's conviction for a Misdemeanor 2- Simple Assault and to disprove beyond a reasonable doubt the Defendant's claim of self-defense.

BY THE COURT:

/s/Lazzara, J.

Date: February 2, 2022

¹ Any argument that the Defendant could not retreat because Mr. Craig was still in possession of his water bottle is unavailing, as the Defendant could have left the restaurant and waited outside for police to arrive to retrieve his bottle.