

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest	)	MEMORANDUM DECISION
of M.F., a person under	)	(Not For Official Publication)
eighteen years of age.	)	
_____	)	Case No. 20090121-CA
	)	
State of Utah,	)	F I L E D
	)	(December 31, 2009)
Plaintiff and Appellee,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2009 UT App 398</span>
v.	)	
	)	
M.F.,	)	
	)	
Defendant and Appellant.	)	

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Third District Juvenile, West Jordan Department, 520234  
The Honorable James R. Michie Jr.

Attorneys: Elizabeth Hunt and Ronald J. Yengich, Salt Lake City,  
for Appellant  
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake  
City, for Appellee

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Before Judges Greenwood, Bench, and Davis.

DAVIS, Judge:

M.F. appeals from the juvenile court's order binding him  
over on one count of aggravated assault.

"To bind a defendant over for trial, the State must show 'probable cause' at a preliminary hearing by 'present[ing] sufficient evidence to establish that the crime charged has been committed and that the defendant committed it.'" In other words, "to prevail at a preliminary hearing, the prosecution must . . . produce believable evidence of all the elements of the crime."

State v. Graham, 2006 UT 43, ¶ 17, 143 P.3d 268 (alteration and omission in original) (citation footnote omitted).<sup>1</sup> M.F. argues that there was not believable evidence to support that the injuries sustained qualified as serious bodily injury and that he acted with an intent to produce such injury.

This matter presents a mixed question of law and fact because a decision to bind a defendant over for trial includes the application of the appropriate bindover standard to the facts presented in [this] case. Accordingly, in reviewing a . . . bindover decision, [we] should afford the [lower court's] decision limited deference.

State v. Ingram, 2006 UT App 237, ¶ 11, 139 P.3d 286 (alterations and omission in original) (citation and internal quotation marks omitted).

"'Serious bodily injury' means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death." Utah Code Ann. § 76-1-601(11) (2008). The evidence presented to the juvenile court showed that the victim suffered from multiple broken bones in his face that required the insertion of five titanium plates and nineteen screws to hold his skull together. Further, there was evidence that the victim's orbital nerve was damaged and that he has no feeling on part of his face, which condition will most likely persist indefinitely. This is certainly sufficient believable evidence to show that the injury at issue here qualified as serious bodily injury. "Although the victim's injuries conceivably could have amounted to substantial bodily injury rather than serious bodily injury, reasonable minds could conclude [otherwise]." See State v. Leleae, 1999 UT App 368, ¶ 20, 993 P.2d 232. Reasonable minds could conclude that multiple broken bones in the victim's face that required surgery to insert multiple plates and screws plus the likely permanent damage to the orbital nerve amounted to serious bodily injury.

There is also sufficient believable evidence to show that M.F. acted with the intent to cause serious bodily injury. "[I]ntent to commit a crime 'may be inferred from the actions of the defendant or from surrounding circumstances.'" State v. Colwell, 2000 UT 8, ¶ 43, 994 P.2d 177 (quoting State v. McClain,

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<sup>1</sup>This standard is applicable to all bindovers, even those under the Serious Youth Offender Act, see Utah Code Ann. § 78A-6-702 (2008). See In re D.K., 2006 UT App 461, ¶ 8, 153 P.3d 736.

706 P.2d 603, 605 (Utah 1985)). Indeed, "the elementary rule [is] that a person is presumed to intend the natural and probable consequences of his acts." State v. Sisneros, 631 P.2d 856, 859 (Utah 1981) (internal quotation marks omitted). The evidence here indicated that M.F. attacked the victim without warning, hitting him near the eye, and continued to throw punches at the victim, including several blows to the face, until physically restrained by a third person. Further, M.F.'s comment "he dropped me and so I dropped him" supports the existence of the necessary intent.<sup>2</sup>

Affirmed.

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James Z. Davis, Judge

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WE CONCUR:

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Pamela T. Greenwood,  
Presiding Judge

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Russell W. Bench, Judge

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<sup>2</sup>M.F. argues that the trial court made no finding regarding the necessary intent element. Although the trial court did comment at the hearing that the intent question was ultimately a question for the jury, it specifically found in its written ruling the necessary elements for a bindover on the charge: "The Court finds there is probable cause to believe that one of the crimes listed in [the Serious Youth Offender Act] has been committed[,] specifically aggravated assault, involving intentionally causing serious bodily injury and that [M.F.] . . . committed said offense." (Emphasis added.)