STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 3, 2013)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**P2-2012-2022B**
	:	
BARTHOLOMEW LONARDO	:	
	:	

DECISION

McBURNEY, M. Before this Court, pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure[1] and Rhode Island General Laws 1956 § 12-12-1.7,[2] is the Motion of Bartholomew Lonardo ("Lonardo" or "Defendant") to Dismiss the four counts charged in the instant Criminal Information. The Defendant alleges that Count Three, conspiracy to commit an unlawful act in violation of Rhode Island General Laws 1956 § 11-1-6, should be dismissed because the Information Package does not contain evidence establishing an

[1] Rule 9.1 of the Rules of Criminal Procedure for the Superior Court states:

> "A defendant who has been charged by information may, within thirty (30) days after he or she has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time."

[2] Rhode Island General Laws 1956 § 12-12-1.7 states:

> "Within thirty (30) days after a defendant is served with a copy of an information charging him or her with an offense, he or she may move in the superior court to dismiss the information on the ground that the information and exhibits appended to it do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. Upon the filing of the motion to dismiss the court shall schedule a hearing to be held within a reasonable time."

agreement between Defendant and the alleged co-conspirators. Additionally, Defendant alleges that Counts One, Two, and Four—charging, respectively, assault and battery on Jacob Fernandes ("Fernandes") resulting in serious bodily injury in violation of § 11-5-2, assault on Fernandes with a dangerous weapon in violation of § 11-5-2, and simple assault on Sumiya Majeed ("Majeed") in violation of § 11-5-3—should be dismissed. Specifically, Defendant argues that the State has failed to support the charges not only under a theory of direct liability because the State did not put forth evidence indicating that Defendant touched or threatened Fernandes or Majeed, but also under a theory of conspirator liability because the State has not put forth evidence to demonstrate that Defendant conspired with the individuals alleged to have assaulted the victims in this case. For the reasons set forth below, this Court denies Defendant's Motion to Dismiss on all counts.

I. Facts and Travel

On Friday, December 16, 2011, Fernandes and his wife, Majeed, attended an office Christmas party in Warwick, Rhode Island. After the party, Fernandes and Majeed drove to Federal Hill, where they met two friends, Paul and Anayte Vargas.[3] The two couples went to Opa Restaurant and, according to Paul, left Opa at approximately 1:25AM to go to Club 295 (the "Club").

The witness statements taken from Fernandes, Majeed, and Paul provide that when they arrived at the Club, Majeed asked Fernandes to accompany her to the bathroom. Majeed had trouble keeping the door locked, and to prevent intrusion from other club patrons, she asked Fernandes to hold it shut. While Fernandes was leaning against the door, he began to feel another person trying to open the door from the other side. Believing that

[3] For the sake of clarity, this Court hereinafter refers to Paul and Anayte Vargas by their first names. This Court certainly intends no disrespect.

the person on the other side was a patron wanting to use the facilities, Fernandes yelled: "Chill out, my wife is peeing, we will be out in a minute."

A few moments later, between four and six bouncers entered the bathroom. Majeed stated that two of the bouncers pinned her husband against the sink, and another bouncer grabbed her shirt with both hands. At that point, the bouncers began hitting Fernandes in the face. Although Majeed attempted to intervene by physically placing herself between the bouncers and Fernandes, that attempt was ineffectual. A bouncer eventually pulled her away by the collar of her coat.

The bouncers pulled Fernandes and Majeed out of the bathroom and put Fernandes in a choke hold. Paul became aware of the commotion and noticed that Majeed and Fernandes were involved. He heard several bouncers yelling "take him out the back," and Paul heard an older man, later identified as co-Defendant and club-manager Anthony Parrillo, order the bouncers to take Fernandes out the back. Additionally, Paul stated that after one bouncer hit Fernandes, he heard Parrillo say: "Not right now there is too many people, we will get him later."

As the bouncers made their way to the back of the Club with Majeed and Fernandes in tow, Paul observed one bouncer, later identified as Defendant, unlock the back door leading to the alley. After unlocking the door, Defendant opened the door to permit the bouncers to take Fernandes and Majeed outside. Once the bouncers were in the alley with Fernandes and Majeed, Defendant closed the door and relocked it, preventing Paul from exiting to the alley.

Although Paul was not able to exit before Defendant locked the door, he was able to see "everything that was happening." As he provided in his witness statement, from his

vantage point at the door, Paul observed one bouncer holding Fernandes' arms behind his back as another bouncer repeatedly hit Fernandes. Paul also observed Parrillo holding Majeed to prevent her from intervening. At some point during the alleged assault, Paul saw Fernandes fall to the ground and then saw Majeed fall on top of him to cover him. He observed both bouncers kicking Fernandes and Majeed while they were on the ground.[4] At some point, the alleged assaults ceased, and Majeed called 9-1-1.

When police arrived, Fernandes was bleeding from the face and head, and he appeared to have a broken nose. He was transported and admitted to Rhode Island Hospital, where the emergency physician noted that he had lacerations on his forehead and under his eye, hematoma and eyelid swelling on his right eye, chipped teeth, and nasal swelling and blood in his nostrils. In the discharge instructions, the clinician stated that Fernandes received multiple fractures to his right orbit, bilateral displaced nasal bone fractures, and sutures on his forehead laceration. He was prescribed pain medication and was scheduled for a follow-up appointment.

After the incident, in a photo line-up, Majeed identified Robinson as the man that grabbed her and kept yelling "you f----ing wh---, you don't have sh-- on me," and she identified Parrillo as the man that came to the bathroom door, grabbed her collar, and led

[4] Although co-Defendant Tomas Robinson also made a statement to police regarding the incident, the statement was inconsistent with the statements given by the complaining witnesses and the impartial witness at the scene. Robinson stated that he was working on the night in question and that Lonardo was assaulted by Fernandes. He further stated that he and Joe Cavanaugh went to the bathroom, where they had seen Fernandes enter with his girlfriend. Robinson stated that when the door opened, Fernandes stabbed Cavanaugh. At that point Robinson claims that he grabbed Fernandes in a "full nelson" and walked him to the side door, but that he never assaulted Fernandes. No victim of a stabbing was found at the scene. Robinson later pled nolo contendere to charges of felony assault and conspiracy to commit felony assault in relation to the events on that evening.

them to the back alley. She did not identify Lonardo. Fernandes identified Parrillo as the man who broke through the bathroom door, attacked him, held back his arms, and perhaps struck his face. Paul identified Robinson as the bouncer who punched Fernandes, and then later kicked both Fernandes and Majeed, identified Lonardo as the bouncer operating the door, and identified Parrillo as the "old man" in his statement.

II. Standard of Review

It is well settled that "[w]hen addressing a motion to dismiss a criminal information, a [Superior Court] justice is required to examine the information and any attached exhibits to determine whether the State has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the Defendant committed it." State v. Martini, 860 A.2d 689, 691 (R.I. 2004) (quoting State v. Fritz, 801 A.2d 679, 682 (R.I. 2002)); see also State v. Aponte, 649 A.2d 219, 222 (R.I. 1994); State v. Reed, 764 A.2d 144, 146 (R.I. 2001). Further, when ruling on a motion to dismiss, "the trial justice should grant the state 'the benefit of every reasonable inference' in favor of a finding of probable cause." State v. Young, 941 A.2d 124, 128 (R.I. 2008) (quoting State v. Jenison, 442 A.2d 866, 875-76 (R.I. 1982)).

"The probable-cause standard applied to a motion to dismiss is the same as that for an arrest." Aponte, 649 A.2d at 222. "Probable cause to arrest 'consist[s] of those facts and circumstances within the police officer's knowledge at the moment of arrest and of which he had reasonably trustworthy information that would warrant a reasonably prudent person's believing that a crime has been committed and that the prospective arrestee had committed it.'" Id. (quoting State v. Usenia, 599 A.2d 1026, 1029 (R.I. 1991)). Thus, probable cause sufficient to support an information is established when, after taking into account relevant

facts and circumstances, a reasonable person would believe that the charged crime occurred and was committed by the Defendant. Furthermore, a trial justice's finding of probable cause "may be based in whole or in part upon hearsay evidence or on evidence which may ultimately be ruled to be inadmissible at the trial." Sec. 12-12-1.9; Reed, 764 A.2d at 146-47.

III. Analysis

A. Count Three: Conspiracy

The Defendant argues that Count Three, charging Defendant with conspiracy to assault Fernandes should be dismissed. Specifically, Defendant contends that the Criminal Information does not present evidence sufficient to support a conclusion that there was a conspiracy between Parrillo and Defendant because the State did not present evidence that Defendant touched or threatened the alleged victims. The State contends that it has provided facts from which a reasonably prudent person would be justified in believing that Defendant entered into an agreement with the alleged co-conspirators to assault Fernandes: namely, that in the context of a one-sided fight, Parrillo ordered his employees to take Fernandes out the back door; that Defendant opened the back door with a key to permit the bouncers to take Fernandes and Majeed outside; that Defendant locked the back door once they exited, thus preventing Paul from rendering aid; and that Fernandes was allegedly assaulted in the alley.

"Conspiracy is defined as a combination of two or more persons to commit an unlawful act or to perform a lawful act for an unlawful purpose." State v. Cipriano, 21 A.3d 408, 422 (R.I. 2011) (quoting State v. Mastracchio, 612 A.2d 698, 706 (R.I. 1992)). Because the unlawful agreement itself threatens the public welfare by decreasing the

probability that the individuals involved will depart from their paths of criminality, "[n]o overt act in furtherance of the scheme is required[.]" State v. Brown, 486 A.2d 595, 601 (R.I. 1985); State v. Barton, 427 A.2d 1311 (R.I. 1981). That is, once the agreement is made, the offense is complete, and no other action is necessary. Brown, 486 A.2d at 601; Barton, 427 A.2d at 1312-13.

As our Supreme Court has recognized, however, the terms of such an agreement are often very difficult to prove. State v. Ros, 973 A.2d 1148, 1163 (R.I. 2009); State v. Oliveira, 774 A.2d 893, 919 (R.I. 2001). Consequently, a court may infer the goals of the alleged conspirators through proof of the "relations, conduct, circumstances, and actions of the parties." Ros, 973 A.2d at 1163; Cipriano, 21 A.3d at 422; Mastracchio, 612 A.2d at 706. Thus, although mere knowledge of the acts of other parties, or mere presence during those acts, is insufficient to establish criminal conspiracy, a court may infer that there is an unlawful agreement based on concerted action or conduct that discloses a concerted design. See United States v. Williams, 647 F.3d 855 (8th Cir. 2011); United States v. Weeks, 653 F.3d 1188 (10th Cir. 2011).

Evidence that a defendant acted in concert or otherwise aided or facilitated a criminal action may suffice to establish the illegal agreement. See Ros, 973 A.2d at 1163 (concluding that conspiracy was "certainly established" when both defendants acted in concert while firing guns into a vehicle); Commonwealth v. Hatchin, 709 A.2d 405, 410 (Pa. Super. Ct. 1998) (finding the requisite intent for criminal conspiracy when defendant locked the door and tried to close the window during an aggravated assault). Indeed, "[a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense" but merely agrees to facilitate some of the acts

leading to the substantive offense. Salinas v. United States, 522 U.S. 52, 63 (1997); United States v. Garibaldi, 208 F.3d 204 (2d Cir. 2000). Accordingly, courts have found individuals to be co-conspirators when they have served as lookouts in illegal activity, see Oliveira, 774 A.2d at 923; United States v. Pitre, 960 F.2d 1112, 1121-22 (2d Cir. 1992); United States v. Larotonda, 927 F.2d 697, 698 (2d Cir. 1991) (per curiam), or when they have provided a protection detail. See Garibaldi, 208 F.3d 204.

The evidence in this case is sufficient that a reasonably prudent person would be justified in believing that Defendant entered into an agreement with the alleged co-conspirators to assault Fernandes. See Cipriano, 21 A.3d at 422. According to the complaining witnesses, the alleged assault began while Fernandes and Majeed were still in the Club. As detailed in the Criminal Information, several bouncers hit Fernandes in the face, Majeed was pulled from the bathroom by the collar of her coat, one bouncer put Fernandes in a choke hold, and the transition from the bathroom to the back of the Club was violent enough that the impartial witness described it as a "fight." See Keating v. State, 711 S.E.2d 327, 332 (Ga. Ct. App. 2011).

Accordingly, when Parrillo ordered his employees to take Fernandes out the back door, it was in the context of this one-sided fight. See Lewis v. State, 714 S.E.2d 732, 735 (Ga. Ct. App. 2011) ("Presence, companionship, and conduct before and after the commission of the alleged offenses may be considered by the jury and are circumstances which may give rise to an inference of the existence of a conspiracy."); Jackson v. State, 73 So. 3d 1176, 1182 (Miss. Ct. App.), cert. denied, 73 So. 3d 1168 (Miss. 2011) ("The agreement need not be formal or express, but may be inferred from the circumstances, particularly by declarations, acts and conduct of the alleged conspirators."). The

Defendant complied with Parrillo's order, thereby facilitating the alleged assault by opening the back door with a key to permit the bouncers to take Fernandes and Majeed outside. In addition, Defendant locked the back door once they exited, thus preventing Paul from rendering aid.

Although Defendant alleges that he did not have knowledge of an agreement to assault Fernandes, the knowledge element of conspiracy will not be defeated by a defendant's willful ignorance. See United States v. Lizardo, 445 F.3d 73, 84-85 (1st Cir. 2006); United States v. Lizotte, 856 F.2d 341, 343 (1st Cir. 1988) (concluding that a willful blindness jury instruction was not error in a conspiracy conviction). Willful ignorance can serve as the basis for knowledge in a conspiracy conviction if, in the light of certain obvious facts, reasonable inferences support a finding that a defendant's failure to investigate is equivalent to burying one's head in the sand. See United States v. Svoboda, 347 F.3d 471 (2d Cir. 2003); United States v. Chavez-Alvarez, 594 F.3d 1062 (8th Cir. 2010).

As noted above, Defendant unlocked the door to the back alley for multiple bouncers, who were dragging Fernandes and Majeed from the bathroom area. The Defendant did so to comply with Parrillo's orders to take Fernandes and Majeed into the back alley. From the vantage point of the locked door, Paul stated that he observed bouncers repeatedly hitting Fernandes and that he saw those same bouncers kicking Majeed and Fernandes while they were on the ground. Accordingly, this Court concludes that based on the evidence provided in the Criminal Information, there was sufficient evidence that a reasonably prudent person could conclude that Defendant conspired with the alleged co-conspirators to commit an assault on Fernandes.

B. Assault and Battery

The Defendant argues that Counts One, Two, and Four—charging, respectively, assault and battery on Fernandes resulting in serious bodily injury, assault on Fernandes with a dangerous weapon, and simple assault on Majeed—should be dismissed. According to Defendant, the State has failed to support the charges both under a theory of direct liability because the State did not put forth evidence indicating that Defendant touched or threatened Fernandes or Majeed, and under a theory of conspirator liability because the State has not put forth evidence to demonstrate that Defendant conspired with the individuals alleged to have assaulted the victims in this case. In contrast, the State argues that it has put forth sufficient evidence in the Criminal Information to support those charges under a theory of conspirator liability because, in the context of a fight, Parrillo ordered his employees to take Fernandes and Majeed into the back alley, Defendant unlocked the back door to facilitate that request, and, after Fernandes and Majeed were forced out of the door, Defendant relocked the door, thereby preventing Paul from assisting or intervening in the alleged subsequent assault.

"An assault is an unlawful attempt or offer, with force or violence, to do a corporal hurt to another, whether from malice or wantonness." State v. McLaughlin, 621 A.2d 170, 177 (R.I. 1993); see State v. Pope, 414 A.2d 781 (R.I. 1980). No bodily contact is necessary. See State v. Cardona, 969 A.2d 667, 675 (R.I. 2009); Proffitt v. Ricci, 463 A.2d 514, 517 (R.I. 1983). A threat of harm, coupled with the present ability to carry out that threat, and the victim's reasonable apprehension of receiving an injury are sufficient to constitute assault. See Cardona, 969 A.2d at 675; Proffitt, 463 A.2d at 517.

A "[b]attery refers to an act that was intended to cause, and does cause, an offensive contact with or unconsented touching of . . . the body of another, thereby generally resulting in the consummation of the assault." State v. McLaughlin, 621 A.2d 170, 177 (R.I. 1993) (quoting State v. Messa, 594 A.2d 882, 884 (R.I. 1991); Proffitt, 463 A.2d at 517). An offensive contact is a touching that proceeds from anger or rudeness, and would be offensive to an ordinary person. See, e.g., United States v. Bayes, 210 F.3d 64, 68 (1st Cir. 2000); United States v. Delis, 558 F.3d 177, 180 (2d Cir. 2009); United States v. Lewellyn, 481 F.3d 695, 697 (9th Cir. 2007).

In determining criminal liability for offenses such as assault or battery, Rhode Island adheres to the Pinkerton doctrine, which provides that an individual who conspires with others may be liable as a principal even if that individual played only a minor role in the commission of the underlying offense. See Ros, 973 A.2d at 1164-65; Oliveira, 774 A.2d at 923; Pinkerton v. United States, 328 U.S. 640, 645, 647 (1946). Accordingly, a conspirator can be liable for criminal offenses committed by a co-conspirator if the offenses are within the scope of the conspiracy, are in furtherance of that conspiracy, and are reasonably foreseeable as a necessary or natural consequence of it. See Ros, 973 A.2d at 1164-65; Oliveira, 774 A.2d at 923; Pinkerton, 328 U.S. at 645, 647.

As noted above, this Court finds that the State has put forth sufficient evidence that a reasonably prudent person would be justified in believing that Defendant conspired with the alleged co-conspirators to assault Fernandes. Accordingly, this Court concludes that the Criminal Information contains sufficient evidence to support Defendant's conspirator liability at this stage in the proceedings for the offenses that are themselves

supported by probable cause. This Court, therefore, now addresses whether there is probable cause sufficient to support each alleged substantive offense.

1. Count One: Assault with Serious Injury Resulting

Section 11-5-2(a) of the Rhode Island General Laws proscribes the assault, or battery, or both, on an individual that results in serious bodily injury. The statute further defines "serious bodily injury" in pertinent part as a "physical injury that: (1) [c]reates a substantial risk of death; [or] (2) [c]auses protracted loss or impairment of the function of any bodily part, member or organ[.]" Sec. 11-5-2(c). Generally, whether an injury causes a "protracted loss or impairment of the function of any bodily part" is a factual matter for jury consideration. E.g., State v. Scanlon, 982 A.2d 1268, 1276-77 (R.I. 2009); State v. Clark, 974 A.2d 558, 573 (R.I. 2009); see, e.g., State v. Barretta, 846 A.2d 946, 949 (Conn. Ct. App. 2004) ("Whether the physical injury sustained was a serious physical injury that caused serious disfigurement is a question of fact for the jury."); Gibson v. Lake Charles Ice Pirates, 788 So. 2d 720, 733 (La. Ct. App. 2001) ("The determination of whether an injury is disfiguring is factual."); State v. Hill, 739 P.2d 707, 709 (Wash. Ct. App. 1987) ("Whether injuries sustained constitute grievous bodily harm is ordinarily a question for the fact finder."). In Scanlon, our Supreme Court held that evidence that the victim's right arm was dislocated, requiring her to use a sling for six weeks and to take pain medications "cleared the statutory hurdle." 982 A.2d at 1276-77. The Court concluded that whether the injury constituted a "serious bodily injury" under the statute was properly submitted to the jury. Id.

Accordingly, this Court finds that there is sufficient evidence in the Criminal Information that a reasonable person would be justified in believing that the injuries

experienced by Fernandes constituted serious bodily injury. See Scanlon, 982 A.2d at 1276-77; Clark, 974 A.2d at 573. When police arrived, Fernandes was bleeding from the face and head and appeared to have a broken nose. Furthermore, Rhode Island Hospital's medical report noted that he had lacerations on his forehead and under his eye, a hematoma and eyelid swelling on his right eye resulting from a fractured right orbit, chipped teeth, and nasal swelling and blood in his nostrils as a result of nasal bone fractures. See Scanlon, 982 A.2d at 1276-77; Clark, 974 A.2d at 573. Fernandes was prescribed pain medications upon his discharge, received sutures for the laceration on his forehead, and was scheduled for a follow-up appointment to evaluate his injuries. See Scanlon, 982 A.2d at 1276-77. Under these circumstances, this Court concludes that there is sufficient evidence in the Criminal Information to support Defendant's criminal liability as to Count One—alleging assault and battery on Fernandes resulting in serious bodily injury. A reasonably prudent person would be justified in believing that the injuries sustained by Fernandes were "serious" within the meaning of the statute. Additionally, the State produced sufficient evidence that a reasonable person would be justified in believing that Defendant conspired with the alleged co-conspirators to assault Fernandes, and under the Pinkerton doctrine, conspirators may be held criminally liable for the acts of co-conspirators in furtherance of the conspiracy.

2. Count Two: Assault with a Dangerous Weapon

Section 11-5-2(a) of the Rhode Island General Laws proscribes the assault, or battery, or both, on an individual with a dangerous weapon. "Although many objects, including knives and firearms, are inherently dangerous weapons, an assault with a dangerous weapon may arise 'when the object used in the assault is not per se a

dangerous weapon if it appears that the object was used in such a way that it had the capability of producing serious bodily harm.'" State v. Bolarinho, 850 A.2d 907, 910 (R.I. 2004) (quoting State v. Mercier, 415 A.2d 465, 467 (R.I. 1980)). The manner of use, rather than any inherent quality in the object determines whether an object is a "dangerous weapon." See id.

A person's foot can qualify as a dangerous weapon. Id. In Bolarinho, for example, our Supreme Court concluded that it had "no hesitation in holding that a person's foot can qualify as a dangerous weapon, particularly when employed with karate-like precision." Id. Other courts have similarly concluded that assaulting a victim by kicking that victim with a shod foot could constitute an assault with a deadly or dangerous weapon. See, e.g., Grass v People, 471 P.2d 602 (Colo. 1970) (stating that there was ample evidence to support the defendants' conviction for assault with a deadly weapon when the victim testified that as he fell to the ground he distinctly recalled one defendant kicking him squarely in the face with his shoe); Pringle v. United States, 825 A.2d 924 (D.C. 2003) (concluding that there was sufficient evidence to support prosecution for assault with a dangerous weapon when defendant used his hiking boot to kick victim); Commonwealth v. Connolly, 730 N.E.2d 318 (Mass. Ct. App. 2000) (concluding that defendant's sneaker, the heel of which he used to stomp on victim's head, could be a dangerous weapon).

Here, this Court finds that there is sufficient evidence in the Criminal Information that a reasonable person would be justified in believing that Fernandes was assaulted with a dangerous weapon. In his official statement to police, Paul stated that he observed two bouncers repeatedly beating Fernandes in the back alley. See Mercier, 415 A.2d at 467.

He further stated that he observed Fernandes fall on the ground, saw Majeed fall on top of him, and that he saw the same two bouncers that had repeatedly hit Fernandes, kick both Fernandes and Majeed while they were both on the ground. See Bolarinho, 850 A.2d at 910.

Although Defendant asserts that the charge should be dismissed because the Criminal Information failed to provide any evidence of the type of shoes worn by the alleged assaulters—or that the alleged assaulters were in fact wearing shoes—his arguments are unavailing. In ruling on a motion to dismiss, "the trial justice should grant the state 'the benefit of every reasonable inference' in favor of a finding of probable cause." See Young, 941 A.2d at 128 (quoting Jenison, 442 A.2d at 875-76). This Court notes that it is reasonable to infer that bouncers on-duty in December would wear closed-toed shoes for the duration of their shifts, and that they would be highly unlikely to step barefoot into a back-alley behind the Club.

Accordingly, this Court finds that there is sufficient evidence in the Criminal Information that a reasonable person would be justified in believing that the alleged assault on Fernandes occurred and was committed with a dangerous weapon. See Bolarinho, 850 A.2d at 910; Young, 941 A.2d at 128. Further, this Court concludes that there is sufficient evidence in the Criminal Information to support Defendant's criminal liability in Count Two. As noted above, the State produced sufficient evidence that a reasonable person would be justified in believing that Defendant conspired with the alleged co-conspirators to assault Fernandes, and under the Pinkerton doctrine, conspirators may be held criminally liable for the acts of co-conspirators in furtherance of the conspiracy.

3. Count Four: Assault on Majeed

The Defendant asserts that Count Four should be dismissed because the Criminal Information does not include any evidence to suggest that Majeed was assaulted in the alley. The Defendant notes that in Majeed's formal witness statement, she states that she was assaulted in the bathroom, but did not state that she was assaulted behind the Club. Accordingly, Defendant argues, Count Four must be dismissed, because any alleged assault on Majeed occurred before Defendant unlocked the door to the alley. In contrast, the State argues that it provided sufficient evidence to support a conclusion that Majeed was assaulted in the alley. It argues that Paul's witness statement—that he saw Parrillo holding Majeed while the other bouncers repeatedly beat Fernandes and that he observed both bouncers kicking both Fernandes and Majeed—suffices to establish probable cause that Majeed was assaulted in the alley.

This Court finds that there is sufficient evidence in the Criminal Information that a reasonable person would be justified in believing that the assault on Majeed did in fact occur. See Salinas, 522 U.S. at 63; Oliveira, 774 A.2d at 923. The Defendant facilitated the alleged assault by opening the back door with a key to permit the bouncers to take Majeed outside. Further, the State produced sufficient evidence that a reasonable person would be justified in believing that Defendant conspired with the alleged co-conspirators to assault Majeed, and under the Pinkerton doctrine, conspirators may be held criminally liable for the acts of co-conspirators in furtherance of the conspiracy. Thus, this Court concludes that there is sufficient evidence in the Criminal Information to support Count Four—alleging assault on Majeed—because a reasonably prudent person would be

justified in believing that Majeed was assaulted in the alley and that Defendant facilitated that assault.

IV. Conclusion

For the reasons set forth above, this Court finds that there is probable cause to believe Count Three, conspiracy to commit an unlawful act in violation of § 11-1-6 has been committed, and was committed by Defendant. Further, this Court finds the existence of probable cause to believe that Count One, assault and battery on Fernandes resulting in serious bodily injury in violation of §11-5-2, Count Two, assault on Fernandes with a dangerous weapon in violation of § 11-5-2, and Count Four, simple assault on Majeed in violation of § 11-5-3 have been committed and that Defendant committed them. Thus, the Motion to Dismiss is denied on all Counts.