

Wikipedia talk:Articles for creation/Ryan Diviney

Ryan Diviney (born September 21, 1989) is a former West Virginia University (WVU) student who now exists in a minimally conscious state (MCS) due to a violent assault that took place during the early morning hours of November 7, 2009.^[1] The attack and ensuing outcomes resulted in national and worldwide attention^{[2][3][4][5][6]} and landmark legal rulings.

Personal Life

Ryan Diviney was born on September 21, 1989 in Reston, VA to parents Ken and Sue Diviney.^[7] Portrayed by many as an "All-American Boy," he had a self-described passion for sports, women, and dogs. As a high school student, Ryan was elected and won Homecoming Court to represent his class as an underclassman at Broad Run High School in Ashburn, Virginia.^[8] A gifted athlete, he played both baseball (named to the Top 50 prospects in the state of Virginia in just his sophomore year)^[9] and football. Ryan was the first in the 45-year history of the school to make the baseball All-District team three consecutive years, according to Pat Cassidy who is the longtime coach of the program.

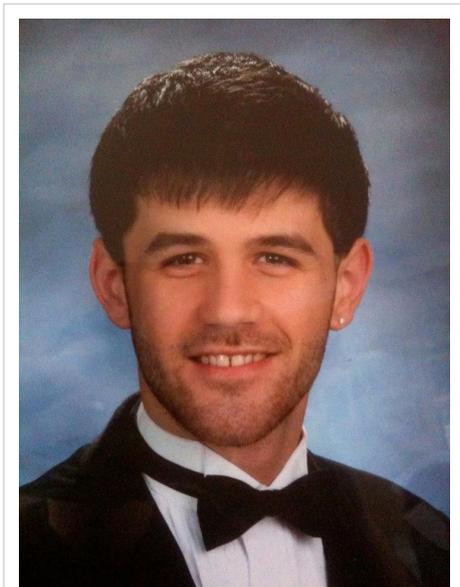
In the fall of 2008, Ryan began attending West Virginia University on a partial academic scholarship.^[10] At the time of his injury, Ryan was a sophomore with a 3.8 grade point average. During his first semester attending, he achieved a perfect 4.0 grade point average and was placed on the President's List. He planned to enter into a career as either a judge or Senator after graduation. He has a younger sister, Kari, who began attending WVU in the fall of 2010.

Assault and Brain Injury

Just after 3 a.m. on November 7, 2009, Ryan and two others were walking to a convenience store adjacent to the WVU campus when they encountered a larger group.^[11] Words were exchanged regarding the Philadelphia Phillies baseball team, and the conversation quickly became heated. Ryan was pushed and began walking backward, hands raised, to get away. Both of Ryan's companions were assaulted; one of them, Bryan McLhinney, was punched in the face by Austin Vantrease and rendered unconscious, his jaw broken. His face and were body lacerated from the fall.

As Ryan backed away, some from the larger group ran him down. WVU student Jonathon May approached from Ryan's blind side and punched him in the face, knocking him unconscious. The punch lifted Ryan off his feet and he struck his head on a raised grate when he fell, believed to damage to his brain stem and frontal lobes.^[12] At this point, 19-year-old Austin Vantrease, visiting from Newark, Delaware, approached Ryan and kicked the unconscious man in the head as if he were "punting a football," according to witness testimony. The ferocity of the Vantrease assault is believed to have caused diffused damage throughout Ryan's brain. May, Vantrease and the others from the larger group then ran, hiding briefly behind a dumpster before fleeing the scene.^[13] When the police and paramedics arrived, Ryan was bleeding from the ears and suffering seizures. His breathing was shallow, slow, and labored.

The attack occurred in the parking lot of the Dairy Mart Foods convenience store, located at 600 Willey Street Morgantown, WV. Much of the encounter was captured on the store's video surveillance, which showed Ryan trying to escape. This video was key evidence in the future criminal trial.^[14]



Ryan Diviney (Photo courtesy of Ken Diviney).

Aftermath

Ryan suffered a fractured skull, a broken jaw, and bleeding of the brain. At Ruby Memorial Hospital ^[15], (Morgantown, WV), Ryan's parents, Ken and Sue, were told that Ryan's only chance of survival involved the removal of a portion of skull through a surgical procedure known as a Decompressive Craniectomy, approximately one-third, to allow for brain swelling. They consented to this procedure even as a priest was summoned to administer last rites. Ryan's chances of surviving this operation were less than 50 percent. Ryan was also given only a slight chance of surviving the next three days, as his brain continued to swell.

Ryan barely survived. His life in the first year following the attack remained tenuous as he endured repeated life-threatening episodes of neurological storming ^[16] (also called "brain storming" or "para-sympathetic storming") for 12 to 18 hours a day. His core body temperature swung below 92 degrees and as high as 109.8. His heart stopped twice, and he endured nine surgeries. As he no longer blinks, his eyes have been sewn shut to prevent further damage; a procedure called Tarsorrhaphy. He is cared for at home, full-time, by his father in Ashburn, Virginia.

Criminal Law Suit

Ryan's assailants, Jonathon Matthew May and Austin Issac Vantrease, both of Newark, Delaware, were arrested within weeks of the attack. Neither had stepped forward to claim responsibility. A manhunt by the Morgantown Police Detectives led to their capture in their hometown of Newark, where each posted \$75,000 bond.

In July 2010, both were criminally convicted in West Virginia State Court (Monongahela District) following a three day trial. May was convicted of misdemeanor battery ^[17] and sentenced to a year in jail; he served 7 months of the sentence. Vantrease was convicted of felony malicious assault ^[17] and sentenced to 2 - 10 years, with a chance for parole after two years. He has been denied parole twice, in 2012 and 2013.^[18] An online petition ^[19] to deny Vantrease's July 2013 parole was signed by nearly 30,000 within a week, and ultimately received more than 156,000 signatures.^[20] When asked at his 2013 parole hearing why he kicked a clearly unconscious man in the head, Vantrease answered that he did not know^[21]. As of October 2013, Vantrease remains incarcerated at the St. Mary's Correctional Center ^[22] in West Virginia, which is for the custody, control and care of adult male felons who have been convicted of severe crimes against man or nature.^[23] Though the Criminal Court has ordered both May and Vantrease to pay approximately \$102,000 in restitution, they have contributed just \$125 in four years.

Civil Law Suit

Ken Diviney filed a civil suit on Ryan's behalf, that was removed to United States Federal Court; Diviney and McLhinney v. Vantrease, May, et al ^[24]. Judge Irene Keeley presided and maneuvered to settle the suit absent the Diviney's consent, despite the family's opposition to this. The resulting judgement was for an undisclosed (court sealed) amount described by Ryan's father as "pennies on the dollar... that fell pennies short of a single nickel."

The civil case, in United States Federal Court, resulted in two landmark rulings:

1. Defeat of the Vantrease's motion to place a restraining order on the website, ryansrally.org ^[25], claiming it could bias the jury pool. Website and blog owners hailed this as a major victory based on the Constitutional right to freedom of speech.^[26]
2. Defeat of the Vantrease's motion that private donations to Ryan should be included under the collateral source rule. The Court found that tangible, non-tangible, and financial donations made to a victim may not be used to offset or reduce a defendant's financial liability awarded to the plaintiff.^[27]

Current Status/Prognosis

Daily care for Ryan involves hygiene, feeding and hydration through a g-tube, physical therapy, vibration therapy, tactile therapy, electrical stimulation therapy, hyperbaric oxygen treatment (HBOT), oral care, eye care, bowel and urine protocols, passive exercises, stretching and range-of-motion, and the administration of dozens of medications and supplements, among others. Though he has showed no clear signs of consciousness since his injury, Ryan's family talks to him in positive tones, in the hope that some part of him can understand.

Many aspects of Ryan's therapy are considered groundbreaking for those who suffer Traumatic Brain Injury (TBI). He is recognized as the only known person with the extreme brain injury, known as Severe Disorders of Consciousness, to employ functional electrical stimulation (FES) exercises that trigger the muscles, albeit involuntarily, to engage in resistance training. Ryan was also considered the first person to use a hyperbaric oxygen chamber in his extreme condition.

The cost of Ryan's care, comfort, and treatment is roughly \$2 million annually.^[28] The Divineys have private health insurance that helps cover some of this expense, but a significant amount of the financial burden is not covered because brain injury treatment and recovery is mostly unknown and considered "experimental."

According to medical experts at the time of the initial injury, the odds of Ryan ever regaining consciousness were only between ten and twenty percent, and with each passing year since the injury those odds are greatly reduced. Even if that were to occur, Ryan would likely remain at a diminished capacity. The average life expectancy for someone in a minimally conscious state is between eight to ten years, but with proper care survival is decades.^[29] All aspects of Ryan's care and treatment are overseen by his father, Ken.

Ryan Diviney, Selected Worldwide Media Links

Washington Post, Dec. 2, 2010: Since beating that left student in coma, his father has kept a constant vigil ^[30]

NBC Today Show, Dec. 15, 2010: Mother of Beaten Teen: I Pray He Wakes ^[31]

Oprah, O Magazine, March 2013 ^[32]

Wired Magazine, Is Anybody in There? Feb. 13, 2013 ^[33]

House News Photographers Association 2011 Awards, May 14, 2011 ^[34]

Official Website

The **Official Web Site** ^[35] for Ryan Diviney is owned and operated by Ryan's Rally LLC. The web site, Ryansrally.org ^[36] provides regular updates on Ryan's status, a blog, solicitation of donations, upcoming events, and other information.

[1] (<http://blogs.wvgazette.com/watchdog/2010/12/02/ryan-diviney-and-the-tragedy-of-one-night-in-morgantown/>), Ryan Diviney: Tragedy of a night in Morgantown, The Charleston Gazette, Dec. 2, 2010.

[2] (<http://www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104553.html>), Since Beating that left student in coma, his father has kept a constant vigil, Washington Post (AP), Dec. 2, 2010.

[3] (<http://www.today.com/id/26184891/vp/40679774#40679774>), Mother of Beaten Teen: I Pray He Wakes, NBC Today Show, Dec. 15, 2010.

[4] (http://www.oprah.com/home/Peter-Walshs-Declutter-For-a-Cause-Challenge_2/1), Oprah, O Magazine, March 2013.

[5] (<http://www.wired.com/wiredscience/2013/02/searching-for-consciousness/>), Wired Magazine, Is Anybody in There? Feb. 13, 2013.

[6] (http://www.washingtonpost.com/conversations/the-washington-posts-white-house-news-photographers-association-2011-award-winners/2011/05/14/AFavVi3G_gallery.html#photo=18), White House News Photographers Association 2011 Awards, May 14, 2011.

[7] *Diviney and McLhinney v. Vantrease*, May, et al, Clerk of Federal Court, United States District Court for the Northern District of West Virginia, Clarksburg, WV

[8] Broad Run High School, Ashburn, VA.

[9] (<http://virginiapreps.rivals.com/>), Virginia Preps.

[10] West Virginia University, Morgantown, WV.

[11] WV Court Records, Clerk of Court: *State of West Virginia v. Austin Vantrease and Jonathan May*, High Street, Morgantown, WV

[12] Dr. Jonathan Fellus (http://www.ibrfinc.org/bio_jonathan_fellus.htm), Deposition: *Diviney and McLhinney v. Vantrease*, May, et al.

- [13] (http://www.loudountimes.com/index.php/news/article/court_postpones_trials_of_ashburn_mans_attacker/)Loudoun Times: Court Postpones Trials of Ashburns Man's Attacker, March 10, 2010
- [14] (<http://ashburn.patch.com/groups/editors-picks/p/diviney-civil-case-moved-to-federal-court>), Diviney Case Moved to Federal Court, Ashburn Patch, Sept. 28, 2011.
- [15] <http://wvuhealthcare.com/wvuh/Hospitals-Clinics/Ruby-Memorial-Hospital/Ruby-Memorial-Hospital>
- [16] <http://www.ncbi.nlm.nih.gov/pubmed/14998101>
- [17] <http://law.justia.com/codes/west-virginia/2005/61/wvc61-2-9.html>
- [18] (<http://ee.dominionpost.com/Repository/ml.asp?Ref=RFBvc3QvMjAxMy8wNy8yMyNBcjAwNzAz&Mode=Gif&Locale=english-skin-custom>), Attacker Denied Parole: Vantrease Isn't Ready, Board Says. The Dominion Post. July 23, 2013.
- [19] <http://www.change.org/petitions/deny-parole-to-austin-vantrease>
- [20] (<http://www.change.org/petitions/deny-parole-to-austin-vantrease>), Change.org, Deny Parole to Austin Vantrease.
- [21] Attacker Denied Parole (<http://ee.dominionpost.com/Repository/ml.asp?Ref=RFBvc3QvMjAxMy8wNy8yMyNBcjAwNzAz&Mode=Gif&Locale=english-skin-custom>), The Dominion Post, July 23, 2013.
- [22] <http://www.wvdoc.com/wvdoc/prisonsandfacilities/saintmarysreformationcenter/tabid/56/default.aspx>
- [23] (<http://www.wvdoc.com/wvdoc/OffenderSearch/tabid/117/Default.aspx>), West Virginia Department of Corrections.
- [24] <http://ryansrally.org/civil-lawsuit-complaint/>
- [25] <http://ryansrally.org>
- [26] Judge won't recommend restraining order in Diviney case (<http://ee.dominionpost.com/Repository/ml.asp?Ref=RFBvc3QvMjAxMi8wNi8wNiNBcjAwNzA1&Mode=HTML&Locale=english-skin-custom>), The Dominion Post, June 6, 2012.
- [27] Judge Keeley Denies Austin Vantrease's Request for Donor List (<http://www.wboy.com/story/20227207/judge-keeley-denies-austin-vantreas-request-for-donor-list?clienttype=printable>), WBOY News, Nov. 30, 2012.
- [28] (<http://ryansrally.org/2013/10/09/happening-now-top-10-list/>) RyansRally.org. Happening Now: Top 10 List. Oct. 9, 2013.
- [29] (http://www.scholarpedia.org/article/Vegetative_state), Scholarpedia.org, Vegetative State.
- [30] <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/01/AR2010120104553.html>
- [31] <http://today.msnbc.msn.com/id/26184891/vp/40679774#40679774>
- [32] http://www.oprah.com/home/Peter-Walshs-Declutter-For-a-Cause-Challenge_2/1,
- [33] <http://www.wired.com/wiredscience/2013/02/searching-for-consciousness/>,
- [34] http://www.washingtonpost.com/conversations/the-washington-posts-white-house-news-photographers-association-2011-award-winners/2011/05/14/AFavVi3G_gallery.html#photo=18,White
- [35] <http://ryansrally.org/>
- [36] <http://Ryansrally.org>

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