

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 00-11,588

VS :

REGINALD JOHNSON :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with criminal attempt homicide and related charges as a result of an incident that occurred on September 25, 2000. A preliminary hearing was held October 3, 2000 before District Magistrate James Carn, after which the charges were bound over for trial. The Defendant filed a Habeas Motion on November 30, 2000, alleging that the Commonwealth did not present sufficient testimony to establish a prima facie case of the charge of criminal attempt homicide.¹ After a review of the transcript from the preliminary hearing, the Court finds the following facts with regard to the charge of criminal attempt homicide.

On September 25, 2000, Aaron Basey was on the front porch of the residence of his girlfriend, Kristen Gair. At approximately 11:00p.m., Gair's mother returned home, accompanied by the Defendant. (N.T. 10/3/00, p.3) Shortly after their arrival, the Defendant confronted Basey on the front porch of the residence.² Basey testified that the Defendant was mumbling something, but he could not understand what he was saying. Basey testified that the Defendant appeared to be drunk. (Id., p. 10) Moments later, the Defendant pulled out a straight razor and held it to Basey's throat. Basey

¹ The parties agreed to submit the motion, before another Judge of this Court, based on the transcript of the preliminary hearing. On June 26, 2001, the undersigned Judge received the file for a Rule 600 Motion, and upon reviewing the file, discovered that the habeas motion had not been disposed of.

testified that as he held the razor to his throat, the Defendant stated that he “already did twenty-two (22) years or something like that in jail for killing somebody and I don’t have no problem with doing it again.” (Id., p. 4) Basey testified that he hit the Defendant’s arm away and kicked the Defendant against the door.

Gair witnessed the incident from a neighbor’s porch. Gair testified that she saw the Defendant holding Basey up against the porch by his jacket. Gair testified that she could hear Basey screaming at the Defendant to let him go. (Id., p 25) As Gair went to aid Basey, the Defendant swung at, and cut Basey’s face with the razor. In the process of cutting Basey, the Defendant also cut Gair in her lip and gums with the razor. The Defendant stood at the scene for approximately two to three minutes, then left the scene. (Id., p. 23) Basey’s wound required over 50 stitches. Gair’s wound required 10 stitches. (Id., p. 21)

The issue before the Court is whether the Commonwealth established a prima facie case of criminal attempt homicide. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). 18 Pa.C.S.A. § 901(a) provides that a person commits an attempt when he, with intent to commit a specific crime, does any act which constitutes a substantial step toward the commission of that crime. 18 Pa.C.S.A. § 2501 defines criminal homicide as intentionally, knowingly, recklessly or negligently causing the death of another human being.

The Commonwealth must have provided evidence, therefore, that the Defendant did an act constituting a substantial step toward intentionally, knowingly, recklessly, or

² Basey testified that he had never seen the Defendant before that evening. (Id., p. 5)

negligently causing the death of Basey. The Court finds the Defendant's statements that he had already served a prison sentence for killing a person, and that he was not afraid to do it again, when viewed in conjunction with Defendant's actions of holding the straight razor knife at the victim's throat, and slashing at the victim's face, is prima facie evidence that the Defendant, with the intent to kill, did an act constituting a substantial step toward killing Basey. The Defendant's motion to dismiss the charge on this basis is therefore denied.

ORDER

AND NOW, this _____ day of June, 2001, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire,
DA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire