

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-10,263
	:
	:
vs.	: CRIMINAL DIVISION
	: Habeas Corpus
KEVIN BOWER,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Petition for Writ of Habeas Corpus, filed March 14, 2001. Hearing on the Petition was held July 19, 2001. Counsel also submitted a transcript of the preliminary hearing for the Court’s consideration.

Defendant has been charged with aggravated assault, simple assault, recklessly endangering another person, endangering the welfare of a child, and two counts of criminal conspiracy, in connection with an incident in which his wife’s ten month old son was seriously burned. A preliminary hearing was held on February 7, 2001, after which one count of criminal conspiracy (to commit aggravated assault) was dismissed and the remaining charges were held for Court. By way of his Petition for Writ of Habeas Corpus, Defendant contends the Commonwealth has failed to establish a prima facie case of aggravated assault for lack of evidence of the requisite mens rea.

Specifically, Defendant argues that pursuant to Commonwealth v O’Hanlon, 653 A.2d 616 (Pa. 1995), mere recklessness is insufficient to support a conviction for aggravated assault, and that a higher degree of culpability is required. O’Hanlon indicates that a recklessness “which considers and then disregards the threat necessarily posed to human life by the offending conduct,” and which contains “an element of deliberation or conscious disregard of danger” is required. Id. at 618 (emphasis in original). Defendant argues that in the instant case, although the evidence indicates that the child was burned by hot water sprayed on the child by Defendant in an attempt to wash off feces

from the child having soiled his diaper, the evidence fails to indicate how long the child was required to be in the water for such significant burns as the child had, to result. Defendant argues that if only a second or two of hot water on the child would have resulted in the burns, the Commonwealth has failed to show the necessary recklessness on Defendant's part. Defendant's argument is specious, however, as the evidence at the preliminary hearing indicated the Defendant told the police officer he held the water on the child for a minute or two, long enough to wash off all of the feces on the child. Considering the evidence of the seriousness of the second degree burns, which required the child be treated at the Critical Care Unit of Lehigh Valley Hospital, a Pediatric Burn Unit, Defendant's testimony regarding the length of time he sprayed the water on the child, and common sense, the Court finds that the Commonwealth has indeed presented a prima facie case of aggravated assault.

ORDER

AND NOW, this day of July, 2001, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 PD
 Gary Weber, Esq.
 Hon. Dudley N. Anderson