

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 01-11,087

VS :

WILLIAM C. ROSE :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Writ of Habeas Corpus.

Defendant has been charged with simple assault, attempt aggravated indecent assault, false imprisonment, kidnapping and related charges as a result of an incident that occurred on June 7, 2001. A preliminary hearing was held on June 21, 2001, after which District Justice McRae bound over the charges. The Defendant now argues that the Commonwealth did not present a prima facie case of the charge of attempted kidnapping. After a review of the transcript of the preliminary hearing, the Court finds the following facts.

On June 7, 2001 at approximately 10:00 p.m., thirteen-year old Christine Rutkoski and her girlfriend, Carrie, were walking in downtown Hughesville doing some errands. She testified that she initially saw the Defendant, sitting on the front porch of his residence. Christine said "hi" as they passed. She testified that the Defendant got into his truck, drove it around the block, stopped at the end of the alley, and put the hood of the truck up. Christine walked Carrie to her home, and continued walking toward her home. She testified that as she passed the Defendant, she again said "hi." (N.T. 6/21/01) She testified that the Defendant then came up to her, put his hand on her shoulder and told her that he was not going to hurt her. She stated that she put her hands on his shoulders "to push him away so he wouldn't drag me right into the truck." (Id., p. 18) She stated that he then reached down, touched her breasts, and put his

hand halfway down her pants. She stated that she tried to struggle away from him, but that he was trying to push her into his truck. (Id., p. 5) She testified that he pulled her to the ground and was on top of her, holding her hand behind her back. Moments later, Christine's mother and step-father ran out into the street after the Defendant, and Christine ran into her home. (Ibid.) Christine stated that the Defendant never dragged her into the truck, and never asked her to get into the truck with him. (Id., p. 20)

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 provides that a person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime. 18 Pa.C.S.A. § 2901 provides that a person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following intentions: . . . (2) To facilitate commission of any felony or flight thereafter, (3) To inflict bodily injury on or to terrorize the victim or another,

In the instant case, the Court finds the fact that the Defendant, after observing the victim walking in the neighborhood, moved his vehicle to the path the victim was walking and tried to force the victim into the vehicle, constitutes a substantial step toward the act of removing the victim from the area. The fact that he fondled her breast and put his hand down her pants as the two fell to the ground in the struggle is prima facie evidence that the Defendant had the intent to remove her from the area for the

purpose of committing a sexual assault. The Court therefore rejects Defendant's argument that a prima facie case had not been established, and denies the Defendant's petition to dismiss the charge of attempt kidnapping.

ORDER

AND NOW, this _____ day of September, 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
Edward J. Rymsza, Esquire
Robert Ferrell, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire