

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-10,445
VS :
LEONARD GEORGE WEBER :

OPINION AND ORDER

Before the Court is Defendant's Petition for Writ of Habeas Corpus. The Defendant has been charged with terroristic threats as a result of an incident that occurred on February 12, 2002. A preliminary hearing was held March 8, 2002 before District Magistrate Page after which the charge was bound over. Defendant now argues that the Commonwealth's evidence was insufficient to establish a prima facie case of the charge. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Mark Fisher testified that the Defendant is a friend whom he has known for approximately 35 years. On February 12, 2002, at approximately 11:15 a.m., a call was received from the Defendant at Fisher's home. Fisher's mother initially answered the phone, and moments later Fisher picked up an extension. The Defendant angrily indicated to Fisher's mother that he had learned that Fisher was going to get probation for his charges of forgery, theft and receiving stolen property in which the Defendant was the victim.¹ (N.T. 3/8/02, pp. 3-4) At some point, Fisher acknowledged that he was

¹ That morning, at approximately 10:00 a.m., the Defendant had attended the preliminary hearing with regard to the charges against Fisher. It was at that time that the Defendant learned of the disposition of Fisher's case. Fisher had not attended the hearing. (Id., p. 4)

also on the phone. The Defendant then directed his statements at Fisher, telling him angrily that he gets away with everything. The Defendant then stated "I have a 9mm pistol and I am going to shoot you in the head...I'm, I'm going to shoot you with it and uh he hung up." (Id., p. 3)

On cross-examination, Fisher testified that he did not know whether the Defendant had a 9mm pistol. He stated "I know back in 1985 that Lenny he had had a gun and called me on the phone and said that he was thinking about doing some harm or kill himself. And, and he shot himself. He took the gun and shot himself in the foot and uh, I had to come down and took, you know he had to go to the hospital, so he said he's going to shoot me and he's got a gun and I know he shot himself, so he kind of scared me. You know, I don't know what he is capable of." (Id., 12) Fisher admitted that he has no knowledge of whether the Defendant still owns the gun.

Officer Trent Peacock, of the Williamsport Bureau of Police, testified that he had investigated the charges of forgery and theft against Mr. Fisher in which the Defendant was the victim. He was present at the preliminary hearing on that matter. He testified that the matter was resolved with a plea agreement, and the hearing concluded at approximately 10:15 a.m. on February 12, 2002. He testified that the Defendant was highly agitated when he left the Magistrate's Office due to the plea agreement. Officer Peacock testified that the Defendant was upset with the way the criminal justice system worked. He expected Mr. Fisher to get jail time out of it." (Id., p. 15)

The issue before the Court is whether the Commonwealth established a prima facia case of terroristic threats. 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). Under 18 Pa.C.S. § 2706, a person is guilty of terroristic threats if he, with the intent to terrorize the victim, threatened to commit a crime of violence. In the instant case, the Commonwealth has alleged that the Defendant, with the intent to terrorize Fisher, threatened to shoot him with a gun. The Defense argues that these were “spur of the moment” statements, made in a moment of anger and frustration brought on by finding out that Fisher had received only probation for his forgery and theft charges against him. The Court agrees.

The Superior Court has held that where a defendant’s statements are the product of an angry and agitated emotional state of mind, the defendant does not possess the requisite intent for conviction under Section 2706. See Commonwealth v. Sullivan, 269 Pa.Super. 279, 409 A.2d 888 (1979)(The defendant called State Police to his home to investigate his claim that Sheriff of the County had assaulted his father. Frustrated in the delay of response, the defendant called the barracks again and said “If you don’t want to send anybody down here, I have a .30-30 rifle and I’ll come up there and blow that son of a bitch’s head off.”) See *also* Commonwealth v. Anneski, 362 Pa.Super. 580, 525 A.2d 373 (1987), appeal denied, 516 Pa. 621, 532 A.2d 19 (1987) (The defendant told her neighbor during confrontation that if neighbor tried to run over her kids anymore at the bus stop, she would bring a gun and use it.)

The Courts have found these two cases stand for the proposition that “statements which are ‘spur of the moment,’ that is, the product of a heated exchange between parties made out of hysteria or anger that do not trigger foreseeable immediate or future danger, are not to be criminalized by 18 Pa.C.S.A. § 2706.” In the Interest of

B.R. a Minor, 732 A.2d 633, 638 (Pa.Super. 1999). The Court would find that the statement made in the instant case, was “spur of the moment,” made in a moment of frustration, and therefore does not possess the requisite intent required under the statute. The Court therefore GRANTS Defendant’s Motion to Dismiss this charge.

ORDER

AND, NOW, THIS _____ day of June 2002, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant’s Petition for Writ of Habeas Corpus is GRANTED, and the charge of Terroristic Threats is Dismissed.

By The Court,

Nancy L. Butts, Judge

cc. CA
DA
G. Scott Gardner, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire