

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 02-11,084

VS :

JONATHON GREEN :

OPINION AND ORDER

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

Defendant has been charged with criminal conspiracy to commit robbery, robbery (with intent to put another in fear of immediate *serious bodily injury*), theft by unlawful taking, receiving stolen property, and possession of drug paraphernalia as a result of an incident on May 28, 2002. A preliminary hearing was held June 21, 2002, after which District Justice Page bound over the charges of robbery (with the intent to put another in fear of immediate *bodily injury*), conspiracy, theft by unlawful taking, and receiving stolen property. The charges of robbery (with the intent to put another in fear of immediate *serious bodily injury*) and possession of drug paraphernalia were dismissed. The Defendant now argues that the Commonwealth did not present a prima facie case of the charges of robbery (with the intent to put another in fear of immediate *bodily injury*) or conspiracy.

After a review of the transcript of the preliminary hearing, the Court finds the following facts.<sup>1</sup> On May 28, 2002, at approximately 4:30 a.m., the Defendant and Timothy Anderson entered the Turkey Hill convenience store at 700 Washington Boulevard. Jacob O. Confer III (Confer) was the only individual working in the store at

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<sup>1</sup> The Court notes that a summary of the facts was difficult to assemble and may not be entirely accurate, due to having received a transcript of the preliminary hearing that was not entirely complete due to inaudible sections.

that time. Confer testified that as the Defendant approached the counter, the phone rang. At that same moment, the Defendant came around the counter area of the store and said something to the effect of “do you know what this is?” (N.T. 6/21/02, p. 6) Confer testified that he believed that the Defendant was indicating that he was robbing the store. (Id., p. 6) While on the phone, Confer watched the Defendant as he walked behind him and went for the cash drawer. (Id., p. 19)

Confer testified that the phone call required him to step into the back room to get a gas reading. As he walked to the back of the store, he saw the Defendant going toward the cigarettes. (Id., p.3)<sup>2, 3</sup> He testified that when he returned from the back of the store, the Defendant and the second actor were gone. (Id., p. 3) Confer testified that he did not attempt to stop the Defendant from taking the money. He stated “I’m not dying for somebody else’s money.”(Ibid.) He testified that it occurred to him at the time that if he tried to stop the Defendant, he could die. (Ibid.)

Confer immediately called the store manager, and the police. He was able to give a description of the suspects, and the vehicle they had been driving. The investigation was also aided by an in-store video surveillance tape. Officer Moore, of the Williamsport Bureau of Police, testified that he watched the surveillance tape of the incident. He testified that the video depicted Anderson standing with his back to the door of the store during the incident as the Defendant went behind the counter of the store. (Id., p. 31)

To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could

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<sup>2</sup> Confer testified that his primary concern at that time was to remain calm.

<sup>3</sup> No threats were made toward Confer, nor were any weapons displayed during the incident. (Id., p. 22)

be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 18 Pa.C.S.A. § 3701(1)(iv) a person is guilty of robbery if in the course of committing a theft, he inflicts bodily injury upon another or threatens another with *or intentionally puts him in fear of immediate bodily injury* (emphasis added).

In the instant case, the Court finds that the Defendant placed Confer in fear of immediate bodily injury. The Defendant aggressively approached the counter where Confer was standing, then asked Confer if he realized what was going on, or that he was going to be robbed. Confer testified that at the time he believed that he could be seriously harmed or killed if he tried to do something to stop the Defendant's actions. See Commonwealth v. Hurd, 268 Pa. Super. 24, 407 A.2d 418 (1979) (Under some circumstances, the victim's fear that the assailant might punch the victim can constitute fear of serious bodily injury required for robbery conviction.) The Court therefore rejects the Defendant's Motion to Dismiss this charge.

The Defendant also asserts that the evidence was insufficient to establish the elements of conspiracy to commit robbery.

### ORDER

AND NOW, this \_\_\_\_ day of August 2002, 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  
Diane Turner, Esquire  
Bill Simmers, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire