

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,096
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
PAUL E. ORWIG,	:
Defendant	:

OPINION AND ORDER

In an Information filed July 12, 2002, Defendant has been charged with aggravated assault, two counts of simple assault and two counts of disorderly conduct, in connection with an incident on May 5, 2002. In the instant Petition for Writ of Habeas Corpus/Amendment of Information, filed August 20, 2002, Defendant seeks to dismiss the charge of aggravated assault for lack of a prima facie case and amend the information to eliminate the charge of simple assault by physical menace as such was dismissed by the magistrate. The amendment of the Information is not contested by the Commonwealth as the docket transcript clearly shows the magistrate did not hold the charge of simple assault by physical menace, and therefore the Information will be amended summarily.

With respect to the Petition for Writ of Habeas Corpus, Defendant contends the evidence presented at the preliminary hearing, a transcript of which was submitted by counsel upon agreement, was insufficient to establish a prima facie case of aggravated assault. The count of aggravated assault with which Defendant is charged is defined as an attempt to cause serious bodily injury to another, or causing such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. 18 Pa. C.S. Section 2702 (a)(1). At the preliminary hearing the Commonwealth presented the testimony of the victim, Russell Kennedy, who indicated that in the midst of a ruckus which he, the victim, tried to deescalate, Defendant became angry, grabbed the victim in a choking manner and then hit him twice in the face with a closed fist. According to the victim’s testimony, Defendant then began pushing the victim, trying to throw him to the ground, that

both the victim and Defendant then did go to the ground, and while the victim was trying to get Defendant's weight off his legs so that he could stand up, he was hit with something and then started to lose consciousness.¹ Defendant testified he was in and out of consciousness, was taken to the hospital and required staples and glue. Defendant and the victim were then pulled apart by other people at the scene. The Commonwealth also presented the testimony of the police officer who responded to the scene, who indicated the victim had blood running from the top of his skull down over his face and that he was very incoherent.

Considering all of this evidence, the Court believes the Commonwealth did present a prima facie case of aggravated assault. While the loss of consciousness and blood may have been attributable to being hit with a shoe by another person, Defendant's actions in punching the victim in the face twice, grabbing him around the throat in a choking manner, pushing him to the ground and ending the attack only when others pulled him away, combined with his display of anger, all support the conclusion that Defendant acted with the requisite intent.

ORDER

AND NOW, this 24th day of October, 2002, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied. The Motion to Amend Information is hereby granted and the Information filed July 12, 2002 is hereby amended to eliminate Count 3, Simple Assault by Physical Menace.

By the Court,

Dudley N. Anderson, Judge

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

¹ It appears from the testimony Defendant contends he was hit with a wooden shoe by another person, who is also charged in this incident.