

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 03-10,291
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
DAVID LOUIS HENDERSON,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with aggravated assault, recklessly endangering another person, and resisting arrest. In the instant Petition for Writ of Habeas Corpus, filed March 14, 2003, Defendant contends the evidence presented at the preliminary hearing is insufficient to support the charges of aggravated assault and recklessly endangering another person. At the hearing before this Court, held April 8, 2003, counsel agreed the Court could render a decision based upon a transcript of the preliminary hearing.

Defendant specifically argues with respect to the charge of aggravated assault that the Commonwealth failed to present sufficient evidence of “bodily injury” and further failed to present sufficient evidence of an intent to cause bodily injury. With respect to the charge of recklessly endangering, Defendant contends the Commonwealth failed to present sufficient evidence that Defendant placed the victim in danger of death or serious bodily injury. After reviewing the transcript of the preliminary hearing, the Court agrees.

The Commonwealth presented the testimony of a Constable, William Welter, who indicated he had gone to Defendant’s residence to serve him with a warrant for his arrest. According to Mr. Welter’s testimony, another person let him into the residence and indicated that Defendant was in the bedroom at the top of the steps. Constable Welter testified that he went up the steps, identifying

himself as he went up, that he knocked on the bedroom door and attempted to open it but that it was being held shut from within. Constable Welter testified that he told Defendant through the door that he had a warrant for his arrest and advised him to come out. When Defendant did not come out, Constable Welter attempted to push the door open and told Defendant after opening the door two to three inches, that he would spray him with Mace if he did not come out. According to Constable Welter's testimony, Defendant then opened the door and attempted to grab the Constable's arm and knock the spray down. At that point, the two got into "physical wrestling and confrontation" which, according to Constable Welter, involved "pushing and shoving and grabbing," as Defendant was "attempting to fight to get away." During this confrontation, Defendant struck Constable Welter with an open hand into his right shoulder and with an elbow in his ribs. Constable Welter testified that the elbow in his ribs was deflected by his vest but that his shoulder was sore from being struck by Defendant's open hand. He further indicated that he was hit in the shoulder as he was reaching for Defendant's arms. Defendant managed to break away from the struggle and after more shoving in the living room, ran outside and then eventually was apprehended later.

The section of aggravated assault with which Defendant was charged provides that a person is guilty of aggravated assault if he "attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty." 18 Pa.C.S. Section 2702 (a)(3). A constable is one of the officers, agents, employees or other persons enumerated in subsection (c). 18 Pa.C.S. Section 2702 (c)(24). The Court agrees with Defendant, however, that the Commonwealth presented insufficient evidence that Defendant attempted to cause or that the constable suffered from bodily injury. Any contact appears to have been the inadvertent result of the struggle and the contact itself does not constitute bodily injury. See Commonwealth v Wertelet, 696 A.2d 206 (1997).

The charge of recklessly endangering another person requires the Commonwealth to show that Defendant recklessly engaged in conduct that placed or may have placed another person in danger of death or serious bodily injury. 18 Pa.C.S. Section 2705. As noted above, Defendant struggled with the constable but the Court cannot conclude that there was any indication that he ever placed or could have placed the constable in danger of death or serious bodily injury.

As the Commonwealth has presented insufficient evidence to support the two charges challenged by Defendant, the charges will be dismissed.

ORDER

AND NOW, this 15th day of April, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby granted and the charges of aggravated assault and recklessly endangering another person are hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

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