

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	: NO. 03-10,437
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
BOGAN JACKSON,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with riot, assault on a sports official, disorderly conduct and simple assault in connection with an incident at a Williamsport High School basketball game on February 1, 2003. After a preliminary hearing, all charges were held for Court. In the instant Petition for Writ of Habeas Corpus, filed April 1, 2003, Defendant contends the evidence presented at the preliminary hearing was insufficient to support the charge of riot. At argument on the petition, heard April 28, 2003, counsel agreed the Court could decide the issue based upon a transcript of the preliminary hearing.

Riot, as charged in the instant case, is defined to encompass those situations where the actor participated with two or more persons in a course of disorderly conduct with intent to commit or facilitate the commission of a felony or a misdemeanor. 18 Pa.C.S. Section 5501(1). Defendant contends the evidence was insufficient to establish a course of conduct and further, to establish a common intent.

“Course of conduct” has been defined in the case law, at least as respects harassment, as “a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.” Commonwealth v Sewell, 702 A.2d 570 (Pa. Super. 1997). While noting that the essence of the offense of riot is “group action”, the Court in Commonwealth v Johnson, 612

A.2d 1382 (Pa. Super. 1982), indicated that the group action contemplated by the statute refers not to the element of intent to commit a felony or misdemeanor, but rather, to the actor's participation with two or more others in a course of disorderly conduct. It thus appears appropriate to focus on the group action in deciding whether a course of conduct has been demonstrated, rather than simply on Defendant's actions alone. In the instant case, testimony at the preliminary hearing indicated that during a basketball game, the head coach was knocked down by a player and that about the same time an assistant coach noticed three people, one of whom was Defendant, come down out of the stands toward him, with their fists up. The assistance coach testified that one of the group swung at him but missed and that a second, a juvenile hit him from behind. At that point the juvenile ran away and a parent escorted the coach down to the far baseline. Upon reaching that area of the basketball court, Defendant, who apparently followed him down the baseline, hit him from the side with a closed fist. Defendant was then wrestled to the ground by a parent. At that point, according to the coach's testimony, "security started rushing the court." The coach's testimony also makes it clear that the three individuals involved in assaulting him were acting in concert. Furthermore, their actions evidence "a continuity of conduct", inasmuch as they all seemed to be attempting to hit the assistant coach, two of them in fact doing so.

With respect to the issue of whether there was sufficient evidence of a shared intent, if Defendant refers to the intent to commit a misdemeanor or felony, as noted above, that element focuses on the intent of the actor alone, and does not require a shared intent. Commonwealth v Johnson, supra. If Defendant is referring to the intent element of the disorderly conduct definition, intent to cause public inconvenience, annoyance or alarm, or recklessly a risk thereof, by engaging in fighting or threatening or in violent or tumultuous behavior, the Court notes the statute defining riot requires only participation in the course of disorderly conduct, falling short of the requirements for a conspiracy. It thus does not appear that the intent to cause public inconvenience, annoyance or alarm need be expressly shared by the participants. Even if such is the case, however, the Court believes sufficient evidence may be inferred from the circumstances of Defendant's and the Co-defendant's actions.

Inasmuch as sufficient evidence of the required elements of riot was presented at the

preliminary hearing to establish a prima facie case, Defendant's Petition for Writ of Habeas Corpus will be denied.

ORDER

AND NOW, this 8<sup>th</sup> day of May, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

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