

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,962
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
LOIS J. PROBST,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with simple assault and recklessly endangering another person in connection with an incident on September 26, 2002. In the instant Petition for Writ of Habeas Corpus, filed December 13, 2002, Defendant contends the evidence introduced at the preliminary hearing is insufficient to establish a prima facie case of recklessly endangering another person. At argument on the Petition, held January 8, 2002, counsel agreed to submit the issue to the Court on the transcript of the preliminary hearing.

A review of that transcript indicates that the victim, ten years old, and three friends were playing on the front porch of a duplex and that Defendant came out of the other half of the residence and was yelling at the kids when she grabbed the back of the victim’s hooded sweatshirt as he began to walk away, turned him around and punched him three times in the head with a closed fist. The victim testified he was hit “pretty hard”, “it hurt”, and that his “eye was black and blue for a day or two.”

In order to establish the crime of recklessly endangering another person, the Commonwealth must present evidence that the actor unlawfully and recklessly engaged in conduct which placed or may have placed another person in danger of death or serious bodily injury. 18 Pa. C.S. Section 2705. Further, the Commonwealth must show an actual present ability to inflict death or serious bodily injury. Commonwealth v Gouse, 429 A.2d 1129 (Pa. Super 1981). In the instant matter, the Court finds the Commonwealth has not shown that Defendant's conduct could have resulted in death or serious bodily injury. The Court therefore agrees with Defendant that a prima facie case has not been presented.

ORDER

AND NOW, this 31st day of January, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby granted and Count 2 of the information filed December 13, 2002 is hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

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