

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

**COMMONWEALTH**

**v.**

**DANIEL VINCENT SNEE,  
Defendant**

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**No.: 04-10,117**

**OPINION AND ORDER**

Before the Court is the Defendant's Omnibus Pretrial Motion, which was filed on February 24, 2004 and submitted on the transcript of the preliminary hearing without additional testimony on March 19, 2004. The facts of the case are that on November 2, 2003 Craig Weaver, the alleged victim, was at Lycoming College visiting Ashley McFadden. Shortly before 1:00 a.m. he and Ms. McFadden were at Mr. Weaver's car, which was parked to the side of Ms. McFadden's dormitory. They were approached by the Defendant and two other individuals. The Defendant began to speak with Ms. McFadden. Mr. Weaver and Ms. McFadden then began to enter the dormitory. They were followed by the Defendant. The other two individuals were about ten yards behind the Defendant. Once in the building's stairway, the Defendant began to punch the alleged victim in the side of the head. Mr. Weaver covered his face and turned, grabbing the Defendant's shirt. At that point, Mr. Weaver could no longer see who was hitting him, but he testified that after being struck more than ten times he was able to get away and looked back to see the Defendant and both of the others standing together in

the stairwell. Ms. McFadden also testified at the preliminary hearing and the transcript of her testimony was also provided to the Court. She was able to view the altercation and observed the Defendant punching Mr. Weaver and also observed "Will", who was one of the individuals with Mr. Snee, with his arm pulled back in a punching motion to swing at Mr. Weaver. Her view of the third person was blocked and she did not know how, if at all, he participated. Ms. McFadden saw Mr. Snee and Will punch Mr. Weaver a total of four times. She attempted to intervene and her action allowed the victim to get away. As she intervened, she saw the Defendant pulling his arm back to punch the victim again. Ms. McFadden then blocked the victim and the blow landed on the back of her head. The other two individuals with the Defendant then held back Ms. McFadden so that she could not attempt again to stop the Defendant from hitting the victim. When the altercation was over, she also heard the Defendant thanking the other individuals with him for their help.

Defendant now argues to the Court that the evidence presented at the preliminary hearing on January 16, 2004 was legally insufficient as a matter of law to hold the charge of conspiracy for court. The Court begins by noting that at a preliminary hearing it is incumbent upon the Commonwealth to establish at least a prima facie case that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 460 Pa. 336, 333 A.2d 755 (1975). See also Commonwealth v. Prado, 481 Pa. 485, 393 A.2d 8 (1978). In order to satisfy this burden of

establishing a prima facie case, the Commonwealth must produce legally competent evidence. See Commonwealth v. Shain, 493 Pa. 360, 426 A.2d 589 (1981). This evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 502 Pa. 359, 466 A.2d 991 (1983). As noted above, the prima facie standard at a preliminary hearing requires that the Commonwealth produce evidence of the existence of each and every element of the crime charged; consequently, absence of any element of any crime is fatal and the charge should be dismissed. See Commonwealth v. Austin, 575 A.2d 141 (Pa. Super. 1990).

The elements of a conspiracy charge require that the Commonwealth prove that a defendant

(1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy. This overt act need not be committed by the defendant;

In the Interest of C.C.J., a Minor, Appeal of C.C.J., 799 A.2d 116 (Pa. Super. 2002), citing Commonwealth v. Hennigan, 753 A.2d 245,253 (Pa. Super. 2000) (other citations omitted). Further, “(b)ecause it is difficult to prove an explicit or formal agreement to commit an unlawful act, such an act may be proved inferentially by circumstantial evidence, i.e., the relations, conduct or circumstances of the parties or overt acts on the part of the co-

conspirators.” Commonwealth v. Spotz, 562 Pa. 498, 756 A.2d 1139, 1162 (Pa. 2000).

In this case, the Defendant claims in his motion that “there is no evidence that the parties acted jointly. . . (or that) the parties took turns striking or assaulting the victim or Ms. McFadden and there is no evidence of any joint participation in any activity either by statement or conduct either before, during or following the alleged assault.” The Court, however, finds that the testimony presented at the preliminary hearing, and particularly that of Ms. McFadden, does supply the necessary evidence of an agreement between the Defendant and the others with him. The Defendant and the others with him traveled as a group, moving first to the car where the victim and Ms. McFadden were located and then following them into the dormitory. While it is true that the Defendant was initially the only person who entered the stairwell and that he was the first person to strike the victim, the testimony of Ms. McFadden clearly provides evidence that the other two individuals with the Defendant participated with him in perpetrating this assault. She testified that after the first punch was thrown by the Defendant, at least one of the other individuals with him also struck the victim. She further testified that when she attempted to stop the Defendant from assaulting the victim, the two individuals with the Defendant acted to ensure that the assault continued. They stopped Ms. McFadden and held her back so that she could not interfere with the Defendant’s punching the victim.

Additionally, the Defendant was heard thanking the others with him for their assistance after the altercation had concluded.

The testimony presented at the preliminary hearing satisfies this Court that there is prima facie evidence that the Defendant and his companions acted in concert and that they jointly participated in an assault on the victim. Accordingly, the District Justice did not err in holding the conspiracy charge for court and this Court will not disturb that finding.

**ORDER**

AND NOW, this \_\_\_\_\_ day of May, 2004, after consideration of the transcript of the preliminary hearing in this case and for the reasons set forth above, the Court DENIES the Defendant's Omnibus Pretrial Motion.

By the Court,

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Nancy L. Butts, Judge J

xc: DA  
Marc Lovecchio, Esquire  
Gary Weber  
Judges  
Judge Nancy L. Butts  
Law Clerk