

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

COMMONWEALTH

v.

**ROGER GRADEN,
Defendant**

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No.: 724-2005

OPINION AND ORDER

Before the Court is Defendant's petition for Habeas Corpus filed May 9, 2005. The petition alleges that the Commonwealth failed to present a prima facie case of Aggravated Assault as charged under the above-captioned information. A preliminary hearing was held on April 22, 2005 before District Judge Allen P. Page pursuant to which all charges were held for court. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Doris Poole testified that on April 2, 2005 at approximately 2:30 a.m. she arrived home to find Defendant "yelling, screaming and hollering" at her. (Transcript of Preliminary Hearing held 4/22/05 pp. 5). According to the testimony, Defendant accused Poole of "screwing around," grabbed her shoulders and threw her to the floor. She was in "instant pain," and conveyed to the Defendant that she was hurt. He continued yelling; ". . . [you're] hurt, good, [too] bad, so what, you need help, you can't call 911 cause I cut the phone line." Id. at 6. Defendant then grabbed Poole's arm and dragged her from the house, across the porch, down the steps, out to the

sidewalk, and according to the testimony, “in the rain, in a puddle and he left me there.” *Id.* As Poole attempted to crawl back into the house, Defendant apparently used the storm door to hit her and push her away. Poole’s injuries were later determined to include a broken hip and index finger.

To successfully establish a *prima facie* case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the defendant could be connected with the crime. *Commonwealth v. Wodjak*, 502 Pa 359, 466 A.2d 991 (1983). A *prima facie* case consists of evidence that, “if accepted as true, would warrant the trial judge to allow the case to go to the jury.” *Commonwealth v. Austin*, 394 Pa.Super. 146, 151, 575 A.2d 141, 143 (1990). A person is guilty of aggravated assault under 18 Pa.C.S. § 2702(a)(1) if he attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. Serious bodily injury is defined at 18 Pa.C.S. § 2301 as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” With respect to serious bodily injury,

A person acts intentionally . . . when it is their common -- her conscious object or purpose to cause such injury. A person acts knowingly with respect to serious bodily injury when she is aware that it is practically certain that her conduct will cause such a result. A person acts recklessly . . . when she consciously disregards a substantial and unjustifiable risk that serious bodily injury will result from her conduct. The risk must

be of such a nature and degree that considering the nature and the intent of the Defendant's conduct and the circumstances known to her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the Defendant's situation.

Commonwealth v. Myers, 1998 Pa.Super. LEXIS 3897, 722 A.2d 1074,

1077

(1998) (emphasis omitted).

The Court finds the evidence sufficient to establish a prima facie case of aggravated assault. Accepting the evidence as true, the victim's injuries were such that after being thrown to the floor she was not able to get up. The result of the assault was a broken hip, an injury which often causes lasting and potentially permanent mobility loss and a reduced quality of life. The Court finds the evidence sufficient to establish that the assault resulted in an injury causing protracted loss or impairment of the function of a bodily member under the definition found in § 2301. Further, the Court finds that the evidence is prima facie sufficient to establish that Defendant caused the victim's injury knowingly. Poole testified that the Defendant followed her into the living room, grabbed her shoulders with both hands and threw her to the floor. Defendant was angry and acting violently. He threw the victim down to the floor with enough force to break her hip. The Court finds this prima facie sufficient to establish Defendant's knowledge and awareness that his actions would cause serious bodily injury to the victim.

Based on the testimony presented at the preliminary hearing, the Court finds that a prima facie case of aggravated assault has been established. Taken as

true, the evidence establishes that Defendant caused the victim serious bodily injury and that he did so knowingly in violation of 18 Pa.C.S. § 2702(a)(1).

ORDER

AND NOW, this _____ day of July 2005, based on the foregoing Opinion, Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

Xc: DA (KO)
PD (NS)
G. Weber, Esq.
Law Clerk