

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 1433-2006
	:
MARIO A. GONZALEZ,	: CRIMINAL ACTION - LAW
	:
Defendant	: HABEAS CORPUS PETITION

DATE: November 17, 2006

OPINION and ORDER

Before the court for determination is the Petition for *Habeas Corpus* of Defendant Mario A. Gonzalez filed August 11, 2006. The Petition will be denied. The evidence presented by the Commonwealth sufficiently establishes a *prima facie* case for the criminal conspiracy to commit robbery, robbery, and terroristic threats charges against Defendant Mario Gonzalez.

I. BACKGROUND

A. Facts

On August 3, 2006, a preliminary hearing was held before Magisterial District Justice C. Roger McRae. The following facts are based upon the testimony presented at that hearing.

At around midnight on July 17, 2006, Paul Williams (hereafter “Williams”) was at the residence of one of his friend’s. Notes of Testimony, 3 (8/3/06). Williams, his friend, and his friend’s girlfriend decided to go swimming in the Muncy Creek. Id. at 3, 35. All three left the residence for the creek in one vehicle. Id. at 4. They arrived at the Muncy Creek at about 12:15 a.m. Ibid.

About an hour to an hour and a half after their arrival, another group of individuals arrived at the swimming area. N.T., 4, 18 (8/3/06). This group arrived in two cars and totaled about nine in number. Id. at 20, 40. Mario Gonzalez (hereafter “Mario”), Jose Gonzalez (hereafter “Jose”), and Edward Thompson (hereafter “Thompson”) were among this group.

Williams knew Mario from a prior occasion. N.T., 19 (8/3/06). Williams and Mario recognized each other and engaged in a friendly conversation. Id. at 18, 19, 28. During this conversation, Mario showed Williams a Smith & Wesson knife he was carrying. Id. at 8, 28. Mario did not threaten Williams with the knife at this point in time, but this would be the same knife that Mario would later swing at Williams. Id. at 28, 29.

The friendliness exhibited by Williams and Mario was echoed by the two groups. Williams and his friends and Mario and his friends were all getting along. N.T., 36 (8/3/06). In fact, a female member of Mario’s group gave Williams a beer. Id. at 37. However, this friendly atmosphere would not last.

Some time later, Williams’s friend and his friend’s girlfriend had a disagreement and decided to leave. N.T., 35, 36 (8/6/06). Williams decided to remain by himself. Id. at 25. This would prove to be a mistake.

There was some bad blood between Williams and Jose. Apparently, Jose had been hanging around some of the children who lived at a trailer court. N.T., 5 (8/3/06). Jose was almost thirty-one years old and the children ranged in age eight to thirteen. Ibid. The disparity in age coupled with Jose’s friendliness toward the children raised the concern of the children’s parents. Ibid. Leary of any continued contact between Jose and the children, Williams took it upon himself to ask

Jose not to have anymore contact with the children. *Ibid.* This did not sit well with Jose, and he blamed Williams for getting him banned from the trailer court. *Id.* at 33.

Williams and Jose had a verbal exchange regarding the circumstances surrounding Jose's banishment from the trailer court. N.T., 6 (8/3/06). This verbal exchange escalated into a physical confrontation when Jose tried to kick Williams. *Id.* at 7, 34. Following the kick, Jose pulled out a knife and swung it at Williams. *Id.* at 22, 34. The knife barely made contact with Williams's chest. *Id.* at 34. In response, Williams took a swing at Jose with his hand and hit him in the head. *Id.* at 7, 10.

Williams and Jose were not alone. Mario, Thompson, and three other individuals were standing near Williams and Jose as they were having their verbal exchange. N.T., 20 (8/3/06). When Jose turned the verbal exchange into a physical altercation, his compatriots did not stand idly by. Mario, Thompson, and the other individuals began to encircle Williams. *Id.* at 7, 9, 22.

Mario and Thompson both were carrying knives and pulled them out. N.T., 7, 8-9, 23 (8/3/06). At least one other member of the group encircling Williams also pulled out a knife. *Id.* at 23. Thus, Williams was surrounded by at least four people with knives. *Id.* at 33.

After his initial swing, Jose swung again at Williams with the knife and stabbed Williams in the area of his right ribs. N.T., 23, 24 (8/3/06). Jose was not the only individual to launch an assault upon Williams and be successful. The individuals encircling Williams punched and kicked at him, and those with knives, which would have included Mario and Thompson, took swings at Williams with their knives. *Id.* at 9, 30. Unfortunately for Williams, the knives found their marks. Williams sustained slash and stab wounds to his right arm, left arm, right thigh, and right ribs. *Id.*

at 13, 38. The wound he sustained to his right arm was so severe as to cause nerve damage to the arm. Ibid. While this attack continued, someone said, “Kill the mother fucker.” Id. at 14. Williams did not know which of the individuals made this threatening statement. Id. at 25.

Somehow, Williams was able to extricate himself from the encirclement and run away from the crowd. However, Williams’s freedom was short lived. The crowd gave chase and caught up to him. N.T., 26 (8/3/06). Williams was then knocked to the ground. Id. at 26.

As Williams lay prone, Mario pinned him to the ground. N.T., 15 (8/3/06). Mario did this by placing his knee on Williams’s chest, by placing one hand on Williams’s throat and choking him, and by placing his other hand on one of Williams’s arms to pin it down. Id. at 10, 15, 27. As Mario was doing this, someone was going through the pockets of Williams’s shorts. Id. at 10. Williams had about seventy dollars in loose bills in his left pocket. Id. at 11, 30. Williams was not able to determine which of the individuals was doing this. Id. at 17, 30. In addition to being restrained and choked by Mario and having his pockets rummaged through, Williams was being kicked and punched by at least four individuals as he lay on the ground. Id. at 11, 15, 26. Two of those individuals were Jose and Thompson. Williams saw Jose and Thompson run up and kick him as he was on the ground. Id. at 11. Despite being in a vulnerable position, Williams was able to mount somewhat of a defense. Williams was kicking with his legs in an effort to fend off his assailants. Id. at 15.

At some point, Mario relinquished his hold of Williams and he was able get away from his assailants. N.T., 12, 47 (8/3/06). He ran into the bushes, crawled through the weeds, and crossed the creek. Id. at 12, 47. Williams laid low for about a half hour to make sure that the individuals

had gone. *Ibid.* Felling confident that they were no longer around, Williams made his way to town in order to get help. *Id.* at 12. He made contact with a farmer who telephoned the Pennsylvania State Police and Williams's girlfriend. *Ibid.* She arrived and took him to the hospital where he received treatment for the injuries he suffered during the altercation. *Id.* at 12, 13. But, these physical wounds would not be the only injuries Williams sustained. The money that Williams had in his pocket prior to the altercation was not there after it. *Id.* at 41.

B. Charges

On July 18, 2006, a criminal complaint was filed against Mario charging him with crimes arising out of the July 17, 2006 altercation. The criminal complaint charged Mario as follows: Count 1 Aggravated Assault, 18 Pa.C.S.A. § 2702(a)(1); Count 2 Robbery, 18 Pa.C.S.A. § 3701(a)(1)(ii); Count 3 Criminal Conspiracy (Aggravated Assault); 18 Pa.C.S.A. § 903(a)(2); Count 4 Criminal Conspiracy (Robbery), 18 Pa.C.S.A. § 903(a)(2); Count 5 Simple Assault, 18 Pa.C.S.A. § 2701(a)(2); Count 6 Terroristic Threats, 18 Pa.C.S.A. § 2706(a)(1); Count 7 Criminal Conspiracy (Simple Assault), 18 Pa.C.S.A. § 903(a)(2); Count 8 Criminal Conspiracy (Terroristic Threats), 18 Pa.C.S.A. § 903(a)(2); Count 9 Theft by Unlawful Taking or Disposition, 18 Pa.C.S.A. § 3921(a); Count 10 Criminal Conspiracy (Theft by Unlawful Taking or Disposition), 18 Pa.C.S.A. § 902(a)(2); Count 11 Harassment, 18 Pa.C.S.A. § 2709(a)(1).

Also on July 18, 2006, criminal complaints were filed against Jose and Thompson charging them with similar offenses arising out of the July 17, 2006 altercation.

C. Mario's Argument

In his Petition for *Habeas Corpus*, Mario argues that the Commonwealth failed to present sufficient evidence at the preliminary hearing to establish a *prima facie* case for Count 2 Robbery, Count 4 Criminal Conspiracy (Robbery), and Count 6 Terroristic Threats. As to Counts 2 and 4, Mario contends that the Commonwealth failed to establish a *prima facie* case because the preliminary hearing testimony failed to establish that he or one of his co-defendants was the individual who took the money from Williams. As to Count 6, Mario contends that the Commonwealth failed to establish a *prima facie* case because Williams failed to identify Mario as the individual who threatened him.

II. ISSUES

Mario's Petition for *Habeas Corpus* raises three issues. They are:

- (1) Whether the Commonwealth presented sufficient evidence to establish a *prima facie* case for the robbery charge against Mario when Williams did not identify Mario as the one who took the money out of his pocket?
- (2) Whether the Commonwealth presented sufficient evidence to establish a *prima facie* case for the conspiracy to commit robbery charge against Mario when Williams did not identify Mario or one of Mario's co-defendants as the individual who took the money out of his pocket?
- (3) Whether the Commonwealth presented sufficient evidence to establish a *prima facie* case for the terroristic threats charge against Mario when Williams did not identify Mario as the individual who made the threatening statement?

III. DISCUSSION

The discussion section of this opinion will be divided into four main parts. First, we will set forth the standard of review by which all three issues will be judged. Second, we will set forth why the evidence presented is sufficient to establish a *prima facie* case for the criminal conspiracy to commit robbery charge against Mario. We will address this issue out of order because the establishment of a *prima facie* case for criminal conspiracy affects the determination as to whether a *prima facie* case for the robbery and terroristic threat charges have been established. Third, we will set forth why the evidence is sufficient to establish a *prima facie* case for the robbery charge against Mario. Finally, we will set forth why the evidence presented is sufficient to establish a *prima facie* case for the terroristic threats charge against Mario.

A. Standard of Review

“The writ of *habeas corpus* exists to vindicate the right of personal liberty in the face of unlawful government deprivation.” *Commonwealth v. Jackson*, 809 A.2d 411, 416 (Pa. Super. 2002) (quoting *Commonwealth v. Morman*, 541 A.2d 356, 358 (Pa. Super. 1988)). “It is settled that a petition for writ of *habeas corpus* is the proper means for testing a pre-trial finding that the Commonwealth has sufficient evidence to establish a *prima facie* case.” *Commonwealth v. Keller*, 822 A.2d 1004, 1010 (Pa. Super. 2003), *app. denied*, 832 A.2d 435 (Pa. 2003). “[T]he finding of a *prima facie* case is the prerequisite for requiring the accused to stand trial for the charges leveled against him.” *Commonwealth v. Cordoba*, 902 A.2d 1280, 1284 (Pa. Super. 2006). “A trial court may grant a defendant’s petition for *habeas corpus*

when the Commonwealth has failed to present a *prima facie* case against the defendant.”

Commonwealth v. Santos, 876 A.2d 360, 363 (Pa. 2005).

The evidentiary sufficiency of the Commonwealth’s *prima facie* case is a question of law.

Commonwealth v. Nieves, 876 A.2d 423, 424 (Pa. Super. 2005), *app. denied*, 891 A.2d 731 (Pa. 2005).

A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. [(citation omitted)]. The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury. [(citation omitted)]. Moreover, ‘inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth’s case.’ [(citation omitted)].

Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003). The Commonwealth is not required to prove the defendant’s guilt beyond a reasonable doubt in order to establish a *prima facie* case. *Santos*, 876 A.2d at 363. Rather, the “more-likely-than-not” test is the minimum standard to be used in assessing the reasonableness of the inferences relied upon to establish a *prima facie* case. *Commonwealth v. Wodjak*, 466 A.2d 991, 996 (Pa. 1983); *Commonwealth v. Lacey*, 496 A.2d 1256, 1261 (Pa. Super. 1985).

B. Mario’s Challenge to the Criminal Conspiracy to Commit Robbery Charge

The Commonwealth has presented sufficient evidence to establish a *prima facie* case for the charge of criminal conspiracy to commit robbery against Mario. The Pennsylvania Crimes Code defines criminal conspiracy as follows:

(a) Definition of conspiracy. – A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(e) Overt act. – No person may be convicted of conspiracy to commit a crime unless an overt act in pursuant of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S.A. § 903(a), (e). Thus, in order to convict a defendant of criminal conspiracy, the Commonwealth must prove that: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) the defendant entered into an agreement with another to engage in the crime; and (3) the defendant or one or more of the co-conspirators committed an overt act in furtherance of the agreed upon crime. *Commonwealth v. Murphy*, 844 A.2d 1228, 1238 (Pa. 2004).

The existence of shared criminal intent is the *sine qua non* a criminal conspiracy. *Commonwealth v. Wayne*, 720 A.2d 456, 464 (Pa. 1998), *cert. denied*, 528 U.S. 834 (1999). No matter how it comes into being, the common understanding that a particular criminal objective is to be accomplished is the essence of a criminal conspiracy. *Commonwealth v. Johnson*, 719 A.2d 778, 784 (Pa. Super. 1998), *app. denied*, 739 A.2d 1056 (Pa. 1999). An explicit or formal

agreement to commit the crime is not required to establish criminal conspiracy and can seldom, if ever, be proven. *Id.* at 785.

Because it is difficult to prove an explicit or formal agreement to commit the crime, the agreement may be established through circumstantial evidence. *Commonwealth v. Galindes*, 786 A.2d 1004, 1010 (Pa. Super. 2001), *app. denied*, 863 A.2d 733 (Pa. 2002). ““The conduct of the parties and the circumstances surrounding their conduct may create a ‘web of evidence’ linking the accused to the alleged conspiracy beyond a reasonable doubt.”” *Johnson*, 719 A.2d at 785 (quoting *Commonwealth v. McKeever*, 689 A.2d 212, 274 (Pa. Super. 1997)). The circumstantial evidence may include the relations of the parties, the conduct or circumstances of the parties, or the overt acts committed by the co-conspirators. *Murphy*, 844 A.2d at 1238; *Galindes*, 786 A.2d at 1010. However, “...‘mere association with the perpetrators, mere presence at the scene, or mere knowledge of the crime is insufficient’ to establish that a defendant was part of a conspiratorial agreement to commit the crime.” *Murphy*, 844 A.2d at 1238 (quoting *Commonwealth v. Lambert*, 795 A.2d 1010, 1016 (Pa. Super. 2002), *app. denied*, 805 A.2d 521 (Pa. 2002)). “There needs to be some additional proof that the defendant intended to commit the crime along with his co-conspirators.” *Ibid.* In order to establish criminal conspiracy, the circumstantial evidence must establish the formation of a criminal confederation between the defendant and his co-conspirators. *Johnson*, 719 A.2d at 785.

The evidence presented at the preliminary hearing is sufficient to establish a *prima facie* case for the criminal conspiracy to commit robbery against Mario. First, the evidence is sufficient to demonstrate that Mario intended to aid in the commission of the robbery. Mario did this by

helping to create circumstances that would more easily facilitate the robbery. He did this in two ways. First, Mario tried to incapacitate Williams by inflicting serious injuries upon him. Mario swung his knife at Williams and inflicted slash and stab wounds upon Williams. Second, when the knife assault did not totally incapacitate Williams, Mario immobilized Williams by pinning him to the ground. This left Williams in a vulnerable position and allowed someone in Mario's group to go through Williams's pockets.

Second, the evidence is sufficient to demonstrate that Mario entered into an agreement with the other members of his group to rob Williams. The conduct of Mario and the five other individuals involved in the attack on Williams, including Jose and Thompson, demonstrates that they acted in a concerted manner to achieve a common objective. When Mario and his friends arrived at the swimming area they directed no hostile actions toward Williams. Instead, they were friendly. It was not until Williams's friends left and he was alone and outnumbered that Mario and his friends became aggressive. The initial attack was made by Jose, but Mario and the other members of his group quickly encircled Williams to prevent his escape. Once Williams was trapped, Mario and the other members of his group used their fists, feet, and knives to attack Williams from all angles. When their attacks failed to incapacitate Williams and he escaped, they gave chase, caught him, and knocked him to the ground. Once on the ground, Mario restrained Williams while other members of his group continued the physical assault on Williams by punching and kicking him. It was also while Mario restrained Williams and the other members of his group continued to strike Williams that one member of the group rummaged through Williams's pockets. The way Mario and his cohorts worked together to incapacitate Williams and

once this was done to rob him is reminiscent of the way a pack of wolves would work together to bring down a deer.

Third, the evidence is sufficient to demonstrate that a co-conspirator committed an overt act in furtherance of the conspiracy. Mario's co-conspirators are not limited to his co-defendants, Jose and Thompson. Mario's co-conspirators are all of the individuals involved in the attack on Williams. Each of these individuals worked together with Mario to incapacitate Williams and rob him once he was incapacitated. While Mario restrained Williams on the ground, a member of the group involved in the assault went through Williams's pockets. The overt act required to establish a criminal conspiracy need not be committed by the defendant; it need only be committed by a co-conspirator. *Lambert*, 795 A.2d at 1016; *Johnson*, 719 A.2d at 784; *see also, Commonwealth v. Schoff*, 2006 Pa. Super. 307 (11/2/06) ("An overt act committed by any co-conspirator in furtherance of the conspiracy will satisfy the overt act requirement in the case against the defendant."). Thus, the act of rummaging through Williams's pockets committed by one of the individuals involved in the assault upon Williams is sufficient to establish the overt act requirement for the criminal conspiracy charge against Mario.

The fact that Williams was not able to identify one of Mario's co-defendant's as the individual who rummaged through his pockets is not fatal to the criminal conspiracy charge against Mario. The prosecution or non-prosecution of a defendant's co-conspirators is irrelevant to the prosecution of a defendant for criminal conspiracy. *Commonwealth v. Fremd*, 860 A.2d 515, 522 (Pa. Super. 2004), *app. denied*, 889 A.2d 1213 (Pa. 2005). A defendant's co-conspirator need not be charged with or convicted of the criminal conspiracy in order to convict the defendant of

criminal conspiracy. *Ibid.* All that is required to convict a defendant of criminal conspiracy is to prove the elements of the crime. *Ibid.* Here, the evidence presented is sufficient to establish a *prima facie* case for the criminal conspiracy charge against Mario.

Accordingly, the Commonwealth has presented sufficient evidence to establish a *prima facie* case for the criminal conspiracy to commit robbery charge against Mario.

C. Mario's Challenge to the Robbery Charge

The Commonwealth has presented sufficient evidence to establish a *prima facie* case for the robbery charge against Mario. Williams was unable to identify who the individual was that rummaged through his pockets, and his testimony tends to exclude Mario as that individual because at the time that individual was rummaging through Williams's pockets Mario's two hands were engaged elsewhere in that one was on Williams's throat and the other was pinning down Williams's arm. Despite this, the Commonwealth has presented sufficient evidence to establish a *prima facie* case to support the charge of robbery against Mario on two theories. The first theory is that Mario is criminally responsible for the robbery as it was an act committed by one of the co-conspirators in furtherance of the conspiracy to which Mario was a party. The second theory is that Mario is criminally responsible for the robbery because he acted as an accomplice during its commission.

1. The Robbery was an Act Committed in Furtherance of the Conspiracy

The evidence presented by the Commonwealth establishes *prima facie* that a conspiracy existed between Mario and the other members of his group, including Jose and Thompson, to rob Williams. "The general rule of law pertaining to the culpability of conspirators is that each

individual member of the conspiracy is criminally responsible for the acts of his co-conspirators committed in furtherance of the conspiracy.” *Wayne*, 720 A.2d at 463. This rule assigns criminal culpability equally to all members of the conspiracy. *Galindes*, 786 A.2d at 1011. “The premise of the rule is that the conspirators have formed together for an unlawful purpose, and thus, they share the intent to commit any acts undertaken in order to achieve that purpose, regardless of whether they actually intended any distinct act undertaken in furtherance of the object of the conspiracy.” *Wayne*, 720 A.2d at 463-64. “All co-conspirators are responsible for the actions undertaken in furtherance of the conspiracy regardless of their individual knowledge of such action and regardless of which member of the conspiracy undertook the action.” *Id.* at 463. Thus, “[e]ven if the conspirator did not act as a principal in committing the underlying crime, he is still criminally responsible for the actions of his co-conspirators taken in furtherance of the conspiracy.” *Lambert*, 795 A.2d at 1016.

As a member of the conspiracy, Mario was criminally responsible for the acts committed in furtherance of it. The robbery of Williams was not just an act committed in furtherance of the conspiracy; it was the very object of the conspiracy. It was the ultimate objective that Mario and his cohorts had been working to achieve through their vicious and relentless assault of Williams. As such, Mario is criminally responsible for the robbery of Williams as a member of the conspiracy.

2. Mario Acted as an Accomplice During the Commission of the Robbery

The second basis upon which the Commonwealth has established a *prima facie* case with regard to the robbery charge against Mario is that the evidence presented demonstrates a *prima*

facie case that Mario acted as an accomplice to the robbery of Williams. A person is criminally responsible for the conduct of another when he is an accomplice of such other person in the commission of a criminal offense. 18 Pa.C.S.A. § 306(b)(3); **Lambert**, 795 A.2d at 1015; **Commonwealth v. Calderini**, 611 A.2d 206, 208 (Pa. Super. 1992), *app. denied*, 625 A.2d 1190 (Pa. 1993). Section 306 of the Pennsylvania Crimes Code defines “accomplice” and “culpability of accomplice.” It provides that:

(c) **Accomplice defined.** – A person is an accomplice of another person in the commission of an offense if:

(1) with the intent of promoting or facilitating the commission of the offense, he:

(i) solicits such other person to commit it; or

(ii) aids or abets or attempts to aid such other person in planning or committing it; or

(2) his conduct is expressly declared by law to establish his complicity.

(d) **Culpability of accomplice.** – When causing a particular result is an element of the offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

18 Pa.C.S.A. § 306(c), (d).

Thus, “[a]n accomplice is one who ‘knowingly and voluntarily cooperates with or aids another in the commission of a crime.’” **Calderini**, 611 A.2d at 208 (quoting **Commonwealth v. Carey**, 439 A.2d 151, 158 (Pa. Super. 1981)).

A person is deemed an accomplice of a principal if "with the intent of promoting or facilitating the commission of the offense, he: (i)

solicit[ed the principal] to commit it; or (ii) aided or agreed or attempted to aid such other person in planning or committing it." 18 Pa. C.S. § 306; *Commonwealth v. Spatz*, 552 Pa. 499, 716 A.2d 580, 585 (Pa. 1998). Accordingly, two prongs must be satisfied for a defendant to be found guilty as an "accomplice." See *Commonwealth v. Woodward*, 418 Pa. Super. 218, 614 A.2d 239, 242 (Pa. Super. 1992). First, there must be evidence that the defendant intended to aid or promote the underlying offense. See *id.* Second, there must be evidence that the defendant actively participated in the crime by soliciting, aiding, or agreeing to aid the principal. See *id.* While these two requirements may be established by circumstantial evidence, a defendant cannot be an accomplice simply based on evidence that he knew about the crime or was present at the crime scene. See *Commonwealth v. Wagaman*, 426 Pa. Super. 396, 627 A.2d 735, 740 (Pa. Super. 1993). There must be some additional evidence that the defendant intended to aid in the commission of the underlying crime, and then did or attempted to do so. See *id.* With regard to the amount of aid, it need not be substantial so long as it was offered to the principal to assist him in committing or attempting to commit the crime. See *Commonwealth v. Cox*, 546 Pa. 515, 686 A.2d 1279, 1286 (Pa. 1997), 158 (Pa. Super. 1981)).

Murphy, 844 A.2d at 1234 (change in original). Thus, "[t]he least degree of concert or collusion in the commission of the offense is sufficient to sustain a finding of responsibility as an accomplice." *Calderini*, 611 A.2d at 208 (quoting *Commonwealth v. Graves*, 463 A.2d 467, 470 (Pa. Super. 1983)).

The Commonwealth has presented sufficient evidence to establish a *prima facie* case that Mario acted as an accomplice to the robbery of Williams. The evidence presented could establish that Mario intended to facilitate the robbery of Williams and aided in the commission of the robbery. Mario joined with the other members of his group in attacking Williams with his knife in an attempt to cause serious injuries to Williams so as to incapacitate him, thereby making it easier to relieve Williams of his valuables. When this proved ineffective and Williams got away, Mario

and the other members of his group gave chase, caught Williams, and knocked him to the ground. While Williams was on the ground, Mario immobilized him by placing his knee on Williams's chest, by placing one hand on Williams's throat and choking him, and by placing his other hand on one of Williams's arms to pin it down. This allowed a member of Mario's group to rummage through Williams's pockets and take his money.

As such, it can hardly be said that Mario was an innocent by-stander or merely present at the scene. Mario actively participated in the assault upon Williams and was the one who restrained Williams on the ground so that another member of Mario's group could take Williams's money. Therefore, the Commonwealth has presented sufficient evidence to establish a *prima facie* case that Mario acted as an accomplice in the robbery of Williams.

Accordingly, the Commonwealth has presented sufficient evidence to establish a *prima facie* case for the robbery charge against Mario.

D. Mario's Challenge to the Terroristic Threats Charge

The Commonwealth has presented sufficient evidence to establish a *prima facie* case for the terroristic threats charge against Mario. While Williams was encircled, someone said, "Kill the mother fucker." Williams was unable to identify who made this threatening statement. Despite being unable to identify Mario as the communicator of this statement, the Commonwealth may still hold Mario criminally responsible for its utterance.

The statement was likely made in order to terrorize Williams.¹ Considering that he was surrounded by at least four individuals with knives, it is logical to conclude that the statement would have had its desired effect upon Williams. But, the threatening statement was not just made for the sake of terrorizing Williams. It was made so that the terror it created could be used to facilitate the robbery of Williams. If Williams believed that he was in danger of serious bodily injury, which would have been a reasonable conclusion when one of the group of individuals encircling him, four of which had weapons, made the suggestion that Williams should be killed, then Williams would be more likely to relinquish his property.² As such, the utterance of the

1 The Pennsylvania Crimes Code defines the offense of terroristic threats as follows:

- (a) Offense defined. – A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:
- (1) commit any crime of violence with the intent to terrorize another;
 - (2) cause evacuation of a building, place of assembly or facility of public transportation; or
 - (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

18 Pa.C.S.A. § 2706(a).

2 The Pennsylvania Crimes Code defines the offense of robbery as follows:

- (a) Offense defined. –
- (1) A person is guilty of robbery if, in the course of committing a theft, he:
 - (i) inflicts serious bodily injury upon another;
 - (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury;
 - (iii) commits or threatens immediately to commit any felony of the first or second degree;

threatening statement was an act in furtherance of the conspiracy to rob Williams; therefore, as member of the conspiracy, Mario is criminally responsible for the terroristic threats made to Williams.

Accordingly, the Commonwealth has presented sufficient evidence to establish a *prima facie* case for the terroristic threats charge against Mario.

IV. CONCLUSION

The Petition *for Habeas Corpus* of Defendant Mario A. Gonzalez is denied.

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- (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury;
or
 - (v) physically takes or removes property from the person of another by force however slight.

18 Pa.C.S.A. § 3701(a)(1).

ORDER

It is hereby ORDERED that the Petition for *Habeas Corpus* of Defendant Mario A. Gonzalez filed August 11, 2006 is DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: Gregory D. Drab, Esquire
Jay Stillman, Esquire
Paul Petcavage, Esquire
District Attorney
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire