

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1536 - 2006
:
vs. : CRIMINAL DIVISION
:
RICKY G. TEDESCO, :
Defendant : Petition for Writ of Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for Writ of Habeas Corpus, contained in his Omnibus Pretrial Motion, filed November 8, 2006. A hearing on the petition was held December 13, 2006.

Defendant has been charged with Rape, Involuntary Deviate Sexual Intercourse, Aggravated Indecent Assault and Indecent Assault, in connection with an incident alleged to have occurred on July 14, 2006. In his petition, Defendant contends the evidence introduced at the preliminary hearing¹ is insufficient to support the charges, specifically arguing that the Commonwealth failed to show forcible compulsion and non-consent.

The crime of rape is defined as follows:

§ 3121. Rape

(a) OFFENSE DEFINED.-- A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

(1) By forcible compulsion.

18 Pa.C.S. Section 3121. Involuntary deviate sexual Intercourse² also contains an element of forcible compulsion, which is defined as follows:

"FORCIBLE COMPULSION." Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.

¹ Counsel stipulated at the hearing that the Court could rely on the preliminary hearing transcript for purposes of the instant petition.

² 18 Pa.C.S. Section 3123.

18 Pa.C.S. Section 3101. Aggravated Indecent Assault³ and Indecent Assault⁴ both require a showing that the indecent contact was without the consent of the victim.

Defendant contends that because the evidence showed that the victim never tried to leave the bedroom, never said “no”, and did not physically resist, there cannot be a finding of forcible compulsion or that the victim did not consent. The Court does not agree.

It is well-settled that where a victim is threatened with physical abuse if she [or he] refuses to engage in intercourse with the assailant even to the point where the victim considers it pointless to resist, we have held that such conduct demonstrates the use of force and threat of force sufficiently compelling to meet the statutory threshold of forcible compulsion.

Commonwealth v. Lee, 638 A.2d 1006 (Pa. Super. 1994), citing Commonwealth v. Gabrielson, 536 A.2d 401, 407 (Pa. Super. 1988). Indeed, shortly after the Lee opinion was issued, the legislature amended the statute to include the afore-mentioned definition of forcible compulsion, which specifically includes psychological force.

In the instant case, the victim, Defendant’s wife of sixteen years, testified on direct examination, in relevant part, as follows:

A. Well, he had gotten up to hang up a phone and I had my head turned, my back turned and I was standing near the sink and he was hanging up a phone and when he hung it up he grabbed ahold of me by the back of the neck.

Q. Okay. He grabbed ahold of you by the back of the neck. What exactly was he doing to your neck?

A. He grabbed ahold of me very forcefully and said, what the f—k are you going to do now? What are you going to f—king do now and pushing my head towards the sink and he goes, it’s over.

Q. Okay. What was -- was there any kind of pain associated?

A. Oh, yeah.

Q. How painful –

A. There was a mark on my neck.

³ 18 Pa.C.S. Section 3125(1).

⁴ 18 Pa.C.S. Section 3126(a)(1).

Q. – would you say?

A. He had ahold of me like a good vice-grip right on the back of my neck.

Q. Okay. And he was pushing your head towards the sink?

A. Right.

Q. Okay. And he was – he said what to you? I'm sorry.

A. What are you going to f—king do now and he repeated it and told me it's over.

Q. Okay. And what was going through your mind when he was saying this?

A. I thought he was going to kill me because he's done this before.

Q. Okay. Now, after he's talking to you and saying this to you and he has you by the neck –

A. Um-hum.

Q. – what does he do?

A. He starts pushing me back towards the bedroom. I grabbed ahold of the refrigerator then –

Q. What were you -- I'm sorry. What were you trying to do by grabbing hold of the refrigerator?

A. Not go back.

Q. Okay. Okay. So he's trying to grab you and drag you.

A. Drag me back the hallway, right.

Q. Okay. But you're grabbing ahold of the refrigerator?

A. I grabbed on to –

Q. Okay.

A. – the refrigerator first then he broke me off of that. There's a stairwell right at the top of the – right at the front door. I grabbed on to that. I even tried to

wrap my leg around it because I nicked up my leg and he scratched and pulled my hands off and then just pushed me right straight back the hallway.

Q. Okay. What was he – he has his hands on your neck –

A. Yes.

Q. – the entire time?

A. Yes.

Q. Okay.

A. The one hand on the back of my neck.

Q. Okay. He drags you into the -- into the bedroom?

A. Right.

Q. Okay. Where does – what does he do at that point?

A. He locks the bedroom door

...

A. – I had on a one-piece shorts outfit that tied at the top and he just come over and untied my top.

...

Q. Okay. Okay. And then what did he do?

A. Pulled it down. And I was sitting on the side of the bed and he said, lay down.

Q. Okay. What kind of voice was he using?

A. Oh, very controlling, direct, do it or else.

...

Q. And once again, what kind of voice was he using?

A. Stern, controlling, direct.

Q. Okay. Did you comply with his request?

A. Yes, I did.

Q. Okay. And if you had not complied with your (sic) request what did you believe would happen?

A. I believed he would probably choke me to death.

...

Q. Okay. Okay. What -- what -- after he left and your 911 call was complete what did you do?

A. My -- as soon as he walked out of the bedroom I thought he may be going for a handgun because I knew we had guns in the house. So I ran out the back bedroom door around the house to the front and up the driveway.

...

Q. Okay. At any time, ma'am, did you give the Defendant consent to do what he did?

A. Absolutely not.

Further, on cross-examination, the victim testified as follows:

Q. You didn't tell him no?

A. Nope.

Q. So you're saying you basically consented to him having sex with you?

A. Never consented at all.

Q. But you did not tell him no?

A. No, because prior when he had done this to me he choked me off and I was afraid he would choke me off again.⁵

⁵ Although this statement was stricken from the record at the preliminary hearing, prior bad acts are admissible where there is a legitimate reason for the evidence and the probative value of such evidence outweighs its prejudicial effect. Commonwealth v. Dowling, 883 A.2d 570 (Pa. 2005). The Court believes the statement is highly probative with respect to the issue of psychological force, and that its prejudicial effect is outweighed by

Q. And you agreed to give him oral sex when he requested that?

A. No, I never agreed. I complied –

...

A. – out of fear.

...

Q. Did you try and push him away at all at any point in time?

A. Considering he just drug me back to the bedroom I don't think I was going to get around him.

N.T., August 14, 2006, at pp. 7 – 10, 10, 11, 12, 14 – 15, 15, 27, 27, 29, respectively.

The Court believes this testimony comprises sufficient evidence of psychological force, shows that the victim was motivated by that psychological force to offer no resistance, and would support a finding that consent was not given. Thus, a prima facie showing of forcible compulsion and lack of consent has been made, and Defendant is not entitled to relief.

ORDER

AND NOW, this 20th day of December 2006, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

that probative value. The statement is thus being considered here as the scope of evidence which a trial court may consider in determining whether to grant a pretrial writ of habeas corpus is not limited to the evidence as presented at the preliminary hearing. Commonwealth v. Morman, 541 A.2d 356 (Pa. Super. 1988).

cc: DA
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Hon. Dudley Anderson