

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 127 – 2007
:
vs. : CRIMINAL DIVISION
:
VINCENT BALAS, :
Defendant : Petition for a Writ of Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for a Writ of Habeas Corpus, filed May 1, 2007. A hearing on the petition was held July 31, 2007.

Defendant was charged with DUI, two counts of terroristic threats, resisting arrest, disorderly conduct – engage in fighting and various summary offenses as a result of an incident with police which followed an automobile accident and police' efforts to aid ambulance personnel in evaluating Defendant for possible injuries. In the instant petition, Defendant contends the evidence is insufficient to support the charges of terroristic threats, resisting arrest and disorderly conduct.

The elements of the offense of terroristic threats (as charged here) are 1) a threat to commit a crime of violence, and 2) communication of such threat with intent to terrorize. 18 Pa.C.S. Section 2706. Our appellate courts have made a distinction, based on language in the Pennsylvania Joint State Government Commission's Comment on the section, between threats which evidence a settled purpose to terrorize and mere spur-of-the-moment threats which result from anger. For example, in Commonwealth v. Speller, 458 A.2d 198 (Pa. Super. 1983), the Court found a settled purpose to terrorize based on the history of incidents initiated by the defendant which were calculated to harass and annoy the victims, and in Commonwealth v. Lumpkins, 471 A.2d 96 (Pa. Super. 1984), the Court found the evidence sufficient to support a conviction where the defendant threatened to kill police officers while holding one of them hostage, pointing a revolver alternately at each of them and inflicting bodily injury on one of them. On the other hand, courts have found the intent to terrorize lacking in situations where there was an exchange of threats made during a heated argument between neighbors, Commonwealth v. Anneski, 525 A.2d 373 (Pa. Super. 1987), where a threat was made over the

telephone in anger and again during a chance meeting on the street the following day during a shouting match, Commonwealth v. Sullivan, 409 A.2d 888 (Pa. Super. 1979), and where the defendant made threats to police who had taken him to the hospital for treatment after he fell out of the police car after having been arrested for public drunkenness, noting that the defendant was “obviously inebriated and in an agitated and angry state of mind.” Commonwealth v. Kidd, 442 A.2d 826, 827 (Pa. Super. 1982).

In the instant case, officers were called to the scene of an accident where Defendant refused to cooperate with emergency medical personnel efforts to evaluate him for treatment. Defendant flailed about and shouted obscenities while emergency medical technicians and officers attempted to strap him to an ambulance bed, and while en route to the hospital, Defendant told officers he would find out who they were and would come to their homes and burn them down. He continued his threats during the entire trip and after arriving in the emergency room, directed threats to the nurses as well as the officers. According to the testimony of all involved, Defendant was very angry and combative and was also highly intoxicated. The Court believes the circumstance in this case show “spur-of-the-moment threats which result from anger”, best described in Commonwealth v. Ashford, 407 A.2d 1328, 1330 (Pa. Super. 1979), as the “braggadocio of an intoxicated bully”, which the Court there distinguished from the threats of a “serious assassin”. Inasmuch as such conduct has been determined to not warrant punishment under Section 2706, the Court cannot find the requisite intent to terrorize. The two counts of terroristic threats will therefore be dismissed.

A person is guilty of the crime of resisting arrest if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty he creates a substantial risk of bodily injury to the public servant or anyone else, or employs means requiring substantial force to overcome the resistance. 18 Pa.C.S. Section 5104. Again, the courts make a distinction, between merely struggling with police and aggressive assertions of physical force. In the instant case, while Defendant was being placed on the ambulance bed he flailed about with his body and legs, tried to “head-butt” those who were attempting to strap him down, attempted to grab the groin of the emergency medical technician and actually did grab the leg of one of the officers, who had to use force to get Defendant to let go. The Court

finds these circumstances to be more like those in Commonwealth v. Butler, 512 A.2d 667 (Pa. Super. 1986), where the evidence was held sufficient to support a conviction of resisting arrest based on testimony that the defendant struck a police officer and it took the assistance of other officers to subdue him, than those in Commonwealth v. Rainey, 426 A.2d 1148 (Pa. Super. 1981), where the defendant simply attempted to squirm, wiggle, twist and shake his way free of the grasp of the arresting officers and the evidence was held insufficient to support the charge. The charge is thus appropriate. With respect to Defendant's contention he was not resisting an arrest, but, rather, attempted treatment, the Court simply notes the statute proscribes resisting the discharge of any other duty as well as an arrest. The officers' assistance in this matter was clearly in the line of duty.

Finally, with respect to the charge of disorderly conduct – engage in fighting, the Court finds the evidence sufficient to support the charge. A person is guilty of this crime if he engages in fighting or threatening or in violent or tumultuous behavior, with intent to cause public inconvenience, annoyance or alarm, or recklessly creates a risk thereof. 18 Pa.C.S. Section 5503(a)(1). The afore-described behavior of Defendant certainly constitutes threatening or violent or tumultuous behavior, and created a risk of public inconvenience, annoyance or alarm as it took place on a highway, defined as a public place by sub-section (c) of the statute. 18 Pa.C.S. Section 5503(c). This charge will therefore be sustained.

ORDER

AND NOW, this 7th day of August 2007, for the foregoing reasons, Counts 2 and 3 of the Information filed March 9, 2007, are hereby DISMISSED. The remainder of Defendant's Petition for a Writ of Habeas Corpus is hereby DENIED.

BY THE COURT,

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge