

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

PATRICIA REIMAN,
Defendant

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CR-1892-2007
CRIMINAL DIVISION

OPINION AND ORDER

Patricia Reiman (Defendant) was arrested on October 16, 2007 and charged with Solicitation to Commit Murder of the First Degree, Solicitation to Commit Aggravated Assault, Possession of a Controlled Substance (cocaine), and Possession with the Intent to Deliver a Controlled Substance (cocaine). On February 23, 2009, by agreement of the parties, the information was amended to include Attempt to Commit Criminal Homicide, Attempt to Commit Aggravated Assault, Recklessly Endangering Another Person, Attempt to Commit Simple Assault, Conspiracy to Commit Aggravated Assault, Conspiracy to Commit Recklessly Endangering Another Person, Conspiracy to Commit Simple Assault, and Conspiracy to Commit Criminal Homicide. Non-jury Trial in this matter was held on April 28, 2009, June 11, 2009, July 16, 2009, and July 31, 2009. At the start of trial, the Commonwealth nolle prossed Counts 1, Solicitation to Commit Murder of the First Degree, Amended Count 5, Attempt to Commit Criminal Homicide, and Count 12, Conspiracy to Commit Criminal Homicide. Defendant also waived her right to receive the verdict pursuant to Rule 622 of the Pennsylvania Rules of Criminal Procedure to enable the Court sufficient time to review the testimony and argument taken over the 4 separate days of proceedings.

Background

At trial, David Reiman (Reiman) testified that he and the Defendant were married approximately thirteen years when they divorced in May of 2006. Reiman explained that prior to their marriage, he and the Defendant each had a daughter. Reiman related that during their marriage, the couple had two children D.R. age 14 and T.R. age 3. He testified that at the time of the divorce he retained the house, his screen printing business, his truck, and custody was split 50/50. Reiman related that he sold the business in June 2007 for \$60,000 and that the Defendant did not receive anything from the sale. Also in June, Reiman had conversations with the Defendant whereupon she demanded \$2,000 because she believed Reiman received \$2,000,000 and by her estimation, the \$2,000 was ten percent. Reiman also related he had three life insurance policies on himself that without knowledge of the Defendant were discontinued in August of 2007.

Reiman explained that in September of 2006, the Defendant filed a Protection From Abuse (PFA) Order¹ against him and then entered four or five complaints that he violated the PFA. He related that he spent one night in the Lycoming County Prison because of the PFA.

Reiman testified that he had two heart attacks, one when he was 31 and one when he was 41 or 42. He said the Defendant was aware of both heart attacks as he had one during the time he was dating Defendant and the other during their marriage. Reiman took heart medication up until approximately three months prior to October 10, 2007.

Reiman began dating Anna Anae (Anae), after his divorce, and she eventually moved into his residence. He related that Anae was occasionally the intermediary for the transfer of his children between him and the Defendant. Reiman testified that approximately two to three

¹ 23 Pa. C.S. § 6101 et seq.

weeks prior to October 10, 2007, Anae informed him that the Defendant wanted to obtain a substance to eliminate him. At the advice of his attorney, Reiman told Anae to document the phone conversations; however, he did not take any of it seriously because he did not think anyone would do something like that. On October 10, 2007, Reiman overheard a telephone conversation between Anae and the Defendant on speakerphone about Defendant desiring to obtain something to “eliminate him,” which would be coming from Las Vegas, Nevada. At that time, Reiman felt the Defendant was planning to hurt him and was serious about it because he heard the tone of her voice and the way she was discussing her plan. Reiman called the Pennsylvania State Police (PSP) and reported the phone conversation.

Anae testified at trial that she has known the Defendant since Thanksgiving weekend of 2006. She related that she would see the Defendant regularly at D.R.’s activities. Anae explained that she regularly talked to the Defendant on the phone because she wanted to know how Reiman behaved when he and the Defendant were married as well as to generally discuss the children. Anae said the Defendant told her that Reiman was abusive, did not work much, and that she had to work to pay all of the bills. Anae explained that she told the Defendant, Reiman was always yelling at the children and had also mentioned hurting Defendant. Anae stated that Reiman’s threat occurred in 2006. Anae believed she and the Defendant spoke regularly and that they each called the other about the same amount.

Anae testified that prior to October 10, 2007, the Defendant gave her D.R.’s medication to give to Reiman to trigger the Defendant’s heart condition. Anae explained at the time she did not know about the Defendant’s heart problems. Anae testified that although she did not give Reiman the medication, she told the Defendant that she did and that he was still alive but appeared run down.

Anae explained that in September of 2007, the Defendant asked her (Anae) to do a favor for her. Defendant told Anae that she wanted her to kill her ex-husband and was going to provide a substance to her to accomplish the task. Anae testified that she hesitated at first because she thought the Defendant was joking. Anae also told Reiman what Defendant had planned and he felt at the time Defendant was joking; Reiman encouraged Anae to play along with the Defendant.

About a week prior to October 10, 2007, the Defendant said she was going to get the “stuff.” On October 10, 2007, Anae received a call from the Defendant. Anae explained that while she was talking to the Defendant she was doing housework, so she had the phone on speakerphone. While discussing the “stuff” with the Defendant, Reiman walked in on the conversation. Defendant told Anae she was going to give her a powder substance that she was to put in Reiman’s coffee. Anae stated Reiman called the police and the next day the two of them went to the State Police barracks. Trooper Brad Eisenhower (Eisenhower) met with them and requested Anae record the subsequent conversations with the Defendant.

On October 12, 2007, during the first recorded conversation, the Defendant and Anae talked about the powder and the Defendant said she no longer wanted to go through with killing Reiman. Anae testified that later that day she spoke with the Defendant at a soccer game, where the Defendant talked about the powder again and that she did not want to talk on the phone because she was concerned the conversations could be recorded. In the second recorded conversation, on October 15, 2007, the Defendant and Anae talked about meeting at Wal-mart so the Defendant could give Anae the powder. Defendant and Anae also discussed what the powder might do to Reiman. She told Anae that the powder would probably give Reiman heart palpitations, cause a heart attack, blow up his heart, or do nothing. Defendant also explained to

Anae that she needed to make the coffee strong so that Reiman did not notice the metallic taste which would be caused by the powder. In the next recorded conversation which also took place on October 15, Anae was wearing a concealed recording device. She met the Defendant at Wal-mart. During this meeting, Defendant gave Anae the powder. Anae stated that Defendant told her it was her decision whether or not she used the powder. After the meeting with Defendant, Anae turned the bag containing a white powdery substance over to the PSP.

Eisenhower testified that he initiated an investigation on October 11, 2007 based on reports from Reiman and Anae. He explained that he went to Reiman's house and spoke with both Reiman and Anae regarding Defendant's plot to kill Reiman. On October 12, 2007, Anae gave a written statement and agreed to have her conversations with the Defendant recorded. Eisenhower related that on October 15, 2007, the Defendant and Anae met in the Wal-mart parking lot and Anae received the powder from the Defendant. Eisenhower testified that the powder substance was tested and determined to be 0.62g of powder cocaine. He then told Anae to call the Defendant and tell her that she put the cocaine in Reiman's coffee and he was now dead.

Eisenhower arrested the Defendant on October 16, 2007. After being read her rights and the criminal complaint the Defendant agreed to talk. In her video recorded statement, the Defendant told Eisenhower that Anae was the one that would call her. She explained that Anae called her once and told her that she gave Reiman some of her pain pills to try to kill him. Defendant also told Eisenhower that she did not give Anae D.R.'s medication, that Anae must have taken it from the bottle on the kitchen table. In her statement, the Defendant also told Eisenhower that she did not want Reiman dead, just wanted him to be [act] normal. She admitted that she gave Anae cocaine because she just wanted Reiman to get high. Defendant also assumed

she was not the beneficiary of Reiman's life insurance policy. When asked how she knew the potential effects the cocaine would have, she explained that she has been around a lot of drug dealers as well as a friend who overdosed on drugs. The Defendant said she paid two hundred dollars for the cocaine and bought it more than a week prior to giving it to Anae. Defendant never contacted Anae to say "don't do it," she just hoped Anae would change her mind and not go through with it.

Defendant also told Eisenhower that she believed Reiman was abusing his children and believed this event would cause him to stop. She claimed she had photos which illustrated the abuse by Reiman. Defendant believed that during every conversation she had with Anae, she was told of the abuse by Reiman. Defendant also told Eisenhower that her boyfriend, Richard Kepner, knew she was getting drugs for Anae, told her not to, but was never told why the cocaine was purchased.

Several reputation character witnesses testified at trial on the Defendant's behalf. James Huffman, Jr. testified that he has known the Defendant for approximately six or seven years and knows her to be law-abiding and non-violent. Huffman explained that he never saw problems between the Defendant and Reiman and that he heard the Defendant allegedly bought drugs. Dennis Hull has known the Defendant for approximately seven or eight years and knows her reputation as non-violent and never heard that she had been arrested prior to this incident. Hull also stated he was not aware the Defendant admitted to buying drugs which allegedly were to be placed in Reiman's coffee. Tamara Feese testified that she has known the Defendant for about six years and knows her reputation to also be law-abiding and non-violent. Feese also was not aware the Defendant admitted to buying drugs. Finally, Thomas Ott testified he has known

Defendant for eight years and knows her reputation for being law-abiding and non-violent. Ott also explained he was aware the Defendant admitted to buying drugs to be used on Reiman.

The Defendant took the stand in her own defense. The Defendant related she and Reiman married in 1993 and divorced in May of 2006. She explained that in September of 2006, a PFA order was filed against Reiman which expired in September of 2007. Apparently, Reiman violated the PFA Order four or five times.

Defendant testified she met Anae during the soccer season of 2006 and first spoke with her around Thanksgiving of 2006. She related that on November 27, 2006, Anae called her and told her that Reiman was both physically and verbally abusing the children. The Defendant explained that Anae called multiple times between that date and October 16, 2007, the date of her arrest, to tell her that Reiman was abusing their children². Defendant related that after weekends with Reiman, D.R. would corroborate Anae's reports. Defendant introduced photographs from September 4, 2007 and September 5, 2007 of T.R. which showed he had a black eye from the abuse.

Defendant went on to explain that in December of 2006 and early January of 2007, Anae told her that Reiman planned to kill her (Defendant) by having a group of men sexually assault her then do away with her. The Defendant testified she went to the police with Anae on February 1, 2007 regarding that incident. She explained she thought the Defendant might actually carry out this plan as he had been abusive in the past.

On August 6, 2007, the Defendant went to the Williamsport Hospital Emergency Room with T.R. because several days earlier on August 2, 2007, Anae told her Reiman was sexually

² The Defendant testified that Anae told her that on several occasions Reiman would call the children names and throw them up against the wall.

molesting T.R. However, after waiting two hours she left without having T.R. examined and never returned.

Defendant claimed that on September 19, 2007, Anae called and said she put two pain pills in Reiman's iced tea but nothing happened to him. She also explained that she did not realize at the time that Anae took any of D.R.'s medication because D.R. did not use the medication.

Defendant testified that on October 10, 2007, Anae called her and asked her when she was getting the "stuff," telling Anae it was not in yet. Defendant explained that she never agreed to get any "stuff." On October 12, 2007, she told Anae that she did not want her to put anything in Reiman's coffee that she would just "deal with him for eighteen more years." Later that day, however, Anae called Defendant again about the stuff and Anae told her the boys were in a screaming fit with Reiman. Defendant testified she said "I'm done."

On October 14, 2007, the Defendant said she saw Anae at one of D.R.'s soccer games. Defendant related that Anae told her Reiman was verbally and physically abusing her and the children and asked if she got the "stuff." The Defendant asserted that she told Anae she was not getting any "stuff." On October 15, 2007, the Defendant went to Wal-mart to pick up T.R. from Reiman when he "got in her face and said he was not paying anything" for D.R.'s orthodontist appointment. Defendant explained that Reiman was yelling at her, complaining about money, and that this caused her to cry and become distraught. Later that day, Anae called Defendant and told her that Reiman flipped out on D.R. and asked if she was getting the "stuff." Defendant said she told Anae she was not. However, claiming Anae's persistence as well as D.R.'s comments about the weekend convinced her she needed to do something; Defendant delivered the cocaine to Anae that day. Defendant acknowledged she had the cocaine for several weeks before she

ever gave it to Anae. Defendant further claimed she did not know her intentions when she bought it, although she admitted that she never used cocaine. She related that she did not really think about what it would do to Reiman. She knew the effect it had on others and they just became goofy. Defendant admitted she knew someone who died from overdosing on cocaine, but did not know how much was needed to kill someone.

Finally, Defendant testified that she did not want to go through with it after she gave Anae the powder. She regretted giving Anae the powder and did not want the children to be without a father. Defendant admitted she neither contacted the police to tell them she gave cocaine to Anae nor did she contact Anae to stop her before she went through with it. Defendant did agree the phone records revealed Anae called her approximately sixty-five to seventy times during this time period and that she called the Defendant approximately sixty-five times.

Discussion

Credibility of Witnesses

“It is well established that the finder of fact is free to believe all, part, or none of the evidence.” Commonwealth v. Carter, 546 A.2d 1173, 1182 (Pa. Super. Ct. 1988). “It is [also] well settled that it is within the province of the trial judge, sitting without a jury, to judge credibility of the witnesses and weigh their testimony. Consequently, credibility determinations are generally not subject to review.” Id. Comparing the testimony of Reiman, Anae, and the Defendant’s recorded conversations with the testimony of the Defendant; this Court makes a general finding of credibility in favor of the Commonwealth’s witnesses and against Defendant.

Solicitation to Commit Aggravated Assault Charge

The Defendant asserts that the Commonwealth presented insufficient evidence that she intended to solicit Anae to put cocaine in Reiman's coffee. The Commonwealth asserts in opposition that the Defendant not only encouraged but requested Anae to help her kill Reiman.

Under Pennsylvania Law,

A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

18 Pa.C.S. § 902. A person is guilty of Aggravated Assault if he or she: "attempts to cause serious bodily injury to another" 18 Pa.C.S. § 2702(a)(1).

The Court finds Defendant intentionally solicited Anae to help her in the commission of these offenses. The testimony reveals the Defendant asked Anae to do her a favor by placing a powdery substance (cocaine) in Reiman's morning coffee. The testimony also reveals that the Defendant spoke with Anae on several occasions to discuss how Anae would go about using the cocaine and the harm it would cause Reiman. Defendant also specifically discussed the fact that Reiman had a heart condition and believed that using the cocaine would affect his heart in a negative way. Defendant even went so far as to caution Anae to make the coffee strong enough so Reiman would not be able to detect the metallic taste the cocaine would have in the drink.

Possession of a Controlled Substance and Possession With the Intent to Deliver Charges

At trial, Defendant admitted to delivering cocaine to Anae.

The elements of a charge of Possession with the Intent to Deliver are the possession (actual or constructive) of a controlled substance and the intent to deliver the controlled substance to another. 35 Pa.C.S.A. § 780-113(a)(30).

From the testimony of the Defendant, Anae, and Eisenhower it is clear the Defendant had been in possession of cocaine, knowing what it was and, in fact, gave it to Anae in the Wal-Mart parking lot on October 15, 2007. Once received by the State Police, the substance was tested and found to be cocaine.

Attempt to Commit Aggravated Assault and Conspiracy to Commit Aggravated Assault Charges

At trial, the Defendant asserted that the Commonwealth failed to establish sufficient evidence that she had the intent to cause Reiman serious bodily injury. Commonwealth argues since Defendant told Anae while there was no guarantee what the cocaine would do to Reiman, that it might, among other things cause a heart attack, or cause his heart to explode and that information is sufficient to establish the crime.

A person is guilty of attempt when, “with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S. § 901. A person is guilty of Aggravated Assault if he or she: “attempts to cause serious bodily injury to another . . .” 18 Pa.C.S. § 2702(a)(1). It is no defense to an attempt charge that it was impossible for the crime to be committed. 18 Pa.C.S. § 901(b). An attempt charge can be defended if the Defendant manifested “a voluntary and complete renunciation of his criminal intent, . . . avoided the commission of the crime attempted by abandoning his criminal effort and, if the mere

abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.” 18 Pa.C.S. § 901(c)(1).

Also according to Pennsylvania Law, 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[.]

18 Pa. C.S. § 903(a)(1).

The Court finds the Defendant both attempted to commit aggravated assault and conspired to commit aggravated assault. The testimony at trial reveals the Defendant purchased cocaine and provided that cocaine to Anae. The testimony also establishes Defendant knew of Reiman’s heart condition and she believed the cocaine might cause him to have a heart attack, or cause his heart to explode. Defendant spoke to Anae on several occasions to enlist her aid in the attempt to injure Reiman. Although Defendant said after she provided the cocaine she did not want Anae to go through with the plan, she never renounced her intent to Anae or legally abandoned the conspiracy. Although the Court is uncertain as to what effect, if any, the cocaine would have on Reiman, it is clear the Defendant’s intent was for the cocaine to cause Reiman serious bodily injury by interfering with his weakened heart.

Recklessly Endangering Another Person and Conspiracy to Commit Recklessly Endangering Another Person Charges

Next, Defendant asserted that the evidence is insufficient to establish she acted recklessly. Further, the Defendant alleges that if the Court finds she acted recklessly that she acted under duress and was entrapped into committing the offense. Commonwealth alleges

Defendant was not acting under duress or entrapped as there was no credible evidence that Defendant was being pressured to engage in this activity or coerced into doing something illegal that she was not already predisposed to do.

The Offense of Recklessly Endangering Another Person is committed when a person “recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 Pa.C.S. § 2705. As to conspiracy, the Court will apply the same law as stated above.

In Pennsylvania, Entrapment is a defense to a crime when the Defendant proves by a preponderance of the evidence that

(a) [a] public law enforcement official or a person acting in cooperation with such an official . . . for the purpose of obtaining evidence of the commission of an offense, . . . induces or encourages another person to engage in conduct constituting such offense by either:

- (1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
- (2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

18 Pa.C.S. § 313.

Duress is also a Defense when the Defendant

engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

18 Pa.C.S. § 309.

The Court finds the Defendant guilty of Recklessly Endangering Another Person and Conspiracy to Commit Recklessly Endangering Another Person. The testimony shows the Defendant purchased cocaine which she provided to Anae to be put in Reiman’s coffee. The

Defendant's behavior is reckless in that in giving Anae cocaine for Reiman's coffee, considering his heart condition, put him in danger of death or serious bodily injury.

The Court finds the Defendant did not prove by a preponderance of the evidence that she was entrapped at the time these crimes were committed. The testimony reveals that prior to the State Police involvement, the Defendant and Anae had been speaking for at least a period of weeks about putting a substance in Reiman's coffee which would possibly cause him harm. This Court further finds that the Defendant was heard on the intercepted conversations actually initiating the conversation regarding the powder substance rather than responding to Anae's requests to engage in that behavior. Defendant also never established that any representations were made by Anae that engaging in the conduct would not be illegal or that Anae herself first attempted to obtain the cocaine to carry out Defendant's plan.

Additionally, this Court fails to understand how Defendant was acting under any type of duress. Defendant claims that the knowledge of her ex-husbands abusive behavior towards the children compelled her to act in this manner. The Court specifically finds this claim to be not credible. Defendant was aware of the legal methods to protect her children. She knew she could go to the hospital, have her children examined by medical staff and pursue the claim with the police and Children and Youth. She could even protect them in the same manner that she protected herself through the filing of a Protection from Abuse order. In fact, Defendant and Anae went to the police to report Reiman's plan to have Defendant assaulted. Instead, Defendant, without even attempting to report her concerns to the police, chose to take the matters into her own hands, conceived this plan and enlisted the help of Anae to assault Reiman. Therefore, the Court cannot find from the facts presented that Defendant has established a viable defense to this charge.

Attempt to Commit Simple Assault and Conspiracy to Commit Simple Assault Charges

Lastly, the Defendant asserts the Commonwealth failed to provide sufficient evidence that the Defendant intended to cause bodily injury to Reiman. Again, the Defendant asserts that if the Court finds she had the intent that the defenses of Entrapment and Duress apply.

According to Pennsylvania Law, a person commits the offense of Simple Assault when he or she “attempts to cause . . . bodily injury to another[.]” 18 Pa.C.S. § 2701(a)(1). The Court also applies the law previously stated for attempt and conspiracy.

The Court finds the evidence sufficient to find the Defendant guilty of Attempt to Commit Simple Assault and Conspiracy to Commit Simple Assault. The testimony reveals the Defendant provided cocaine to Anae to place in Reiman’s coffee. Although, Defendant was not sure what the cocaine would do, she knew of Reiman’s weakened heart and believed the cocaine could possibly cause him to have a heart attack, or cause his heart to explode. This Court relies on its previous analysis of the Defendant’s claims of duress and entrapment, finding neither existed.

VERDICT

AND NOW, this ____ day of September 2009, after a Non-jury Trial, the Court finds beyond a reasonable doubt the Defendant is guilty of the following offenses:

1. Count 2 – Solicitation to Commit Aggravated Assault
2. Count 3 – Possession of a Controlled Substance
3. Count 4 – Possession with Intent to Deliver
4. Count 6 – Attempt to Commit Aggravated Assault
5. Count 7 – Recklessly Endangering Another Person
6. Count 8 – Attempt to Commit Simple Assault
7. Count 9 – Conspiracy to Commit Aggravated Assault
8. Count 10 – Conspiracy to Commit Recklessly Endangering Another Person
9. Count 11 – Conspiracy to Commit Simple Assault

Defendant is scheduled for sentencing on the above offenses on **November 12, 2009 at 11:00 a.m. in Courtroom No. 4, Lycoming County Courthouse, Williamsport, PA 17701**. A Pre-Sentence Investigation report shall be prepared by the Pennsylvania Board of Probation and Parole.

By the Court,

Nancy L. Butts, Judge

xc: DA (KO)
Peter T. Campana, Esq.
PBPP, APO
Deb Smith, CST
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)