

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**WILLIAM DOWNS,
Defendant**

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**No. 1270-2010
CRIMINAL**

OPINION AND ORDER

Defendant filed a Petition for Writ of Habeas Corpus on August 31, 2010. A hearing on the Motion was held on November 2, 2010.

Background

On August 6, 2010, a Preliminary Hearing was held before Magisterial District Judge Allen Page. At the Preliminary Hearing, Heather Nelson (Nelson), an alleged victim in this case, testified as to events that occurred on June 27, 2010. Nelson testified that around 2:00 a.m. on June 27, 2010, she was talking on the phone in front of the Coffee and Tea Room in Williamsport. While she was sitting in a chair talking on the phone, Nelson saw a male in a red shirt walk past her twice. The male then came towards her, grabbed her by the back of the hair, and then threw her on the ground. Nelson ended up lying on her back on the ground and she began to scream. The male then kicked her in the ribs on her left side. Nelson began to scream even louder and the male told her to shut up or he would kill her. Nelson then managed to grab an iron chair and swing it at the male, who at this time had begun to run away from Nelson.

Nicole Wagoner (Wagoner), also an alleged victim in this case, testified at the Preliminary Hearing. Wagoner testified that on June 27, 2010, at around 2:40 a.m., she was walking home on Market Street in Williamsport when she noticed a male following her.

Wagoner began to walk quickly, but the male grabbed her around the waist, put his hand over her mouth, and pulled her down an alley. The male dragged Wagoner on the ground so that her knees scraped the ground. Wagoner sustained injuries on her knees as a result of the incident. When Wagoner screamed into the male's hand he told her to shut up or he would kill her. At one point Wagoner managed to get the male's hand off of her mouth and she started to scream, but the male then punched her in the face twice. Once she was in the alley, the male threw Wagoner on the ground, straddled her, touched her breasts, and then unbuckled his pants. However, at this point another person came down the alley and the male ran away. At the time of the Preliminary Hearing, Wagoner identified the Defendant as the male who attacked her.

Both Nelson and Wagoner provided detailed descriptions of their aggressor. Around 4:43 a.m. Officer Eric Houseknecht and Officer Paulhamus of the Williamsport Bureau of Police were patrolling in the 600 block of Hepburn Street when they saw a white male who fit the physical description given by both Nelson and Wagoner. The male was identified as William Edward Downs (Defendant). Both Nelson and Wagoner were brought to the area and both positively identified the Defendant as the man who had attacked them earlier in the morning.

Discussion

The Defendant filed a Petition for Habeas Corpus to dismiss criminal counts relating to the incidents involving both Nelson and Wagoner. At the time of the November 2, 2010 hearing on the Habeas Corpus Petition, Defense Counsel orally amended the Habeas Petition to reflect that counts 2, 4, 6, 8, 9, and 11 relate to Nelson and counts 1, 3, 5, 7, 10, and 12 relate to Wagoner. The amended Petition reflects the counts as they are listed in the Criminal Information.

A petition for habeas corpus is the means by which a party can challenge at the pre-trial level whether the Commonwealth presented sufficient evidence against them to establish a prima facie case. Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003). The standard for a prima facie case is met when the Commonwealth produces enough evidence to establish “[p]robable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Williams, 911 A.2d 548 (Pa.Super.2006). (citing Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003)).

The following are the charges against the Defendant as they relate to Nelson: Count 2 Criminal Attempt (Rape); Count 4 Unlawful Restraint; Count 6 False Imprisonment; Count 8 Simple Assault – Physical Menace; Count 9 Aggravated Assault; Count 11 Terroristic Threats – Threat of Violent Crime. In the Petition for Habeas Corpus, the Defendant avers that Count 2 Criminal Attempt (Rape), Count 4 Unlawful Restraint, Count 6 False Imprisonment, Count 8 Simple Assault – Physical Menace, and Count 9 Aggravated Assault, all relating to the incident with Nelson, should be dismissed due to a lack of a prima facie showing.

A person is guilty of Criminal Attempt when that person, with the intent to commit a specific crime, does any act which constitutes a substantial step toward the commission of the crime. In this case, the Defendant is charged with Criminal Attempt of Rape. A person is guilty of Rape when that person engages in sexual intercourse with a complainant by forcible compulsion. 18 Pa.C.S.A. §3121(a)(1). It does not appear that the Defendant made a substantial step toward engaging in sexual intercourse by forcible compulsion with Nelson. The Defendant merely threw Nelson to the ground where she landed on her back. Nothing in the Defendant’s conduct as it relates to Nelson establishes a prima facie case for Attempted Rape. Therefore, the

Defendant's Petition for Habeas Corpus shall be granted as to the charge of Criminal Attempt (Rape) against Nelson.

A person is guilty of Unlawful Restraint when that person knowingly restrains another unlawfully in circumstances exposing that person to risk of serious bodily injury. 18 Pa.C.S.A. §2902(a)(1). A person commits the crime of False Imprisonment when that person knowingly restrains another unlawfully so as to interfere substantially with that person's liberty. 18 Pa.C.S.A. §2903(a). A person commits Simple Assault when that person attempts by physical menace to put another person in fear of imminent serious bodily injury. 18 Pa.C.S.A. §2701(a)(3). A person commits Aggravated Assault when that person 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. 18 Pa.C.S.A. §2702(a)(1). In this case, the Defendant grabbed Nelson by her hair and threw her on the ground where she landed on her back. When Nelson started screaming, the Defendant kicked her in the ribs and yelled at her to shut up or he would kill her. Nelson testified at the Preliminary Hearing that once the Defendant threw her on the ground, she did not feel that she was able to leave the area. Based on these facts, the Court believes that there is sufficient evidence to prove a prima facie case against the Defendant for the charges of Unlawful Restraint, False Imprisonment, Simple Assault, and Aggravated Assault.

The following are the charges against the Defendant as they relate to Wagoner: Count 1) Criminal Attempt; Count 3) Unlawful Restraint; Count 5) False Imprisonment; Count 7) Simple Assault – Physical Menace; Count 10 Aggravated Assault and; Count 12 Terroristic Threats – Threat of Violent Crime. In the Petition for Habeas Corpus, Defense Counsel avers that Count 10 Aggravated Assault should be dismissed. A person commits Aggravated Assault if that

person attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to human life. 18 Pa.C.S.A. §2702(a)(1). Wagoner's testimony at the Preliminary Hearing concerning the events of the early morning of July 27, 2010, which is described in detail above, produced enough evidence to warrant the belief that the Defendant committed the offense of Aggravated Assault against Wagoner. Specifically, the Defendant grabbed Wagoner from behind, dragged her into an alley, punched her in the face, threw her on the ground, touched her breasts, and straddled her. The Court believes this evidence is sufficient to produce a prima facie case against the Defendant for Aggravated Assault.

ORDER

AND NOW, this 2nd day of December, 2010 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby GRANTED as it relates to the charge of Criminal Attempt (Rape) against Nelson. In all other respects, the Petition for Habeas Corpus is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. Mary Kilgus, Esq.
Jeana Longo, Esq.
Amanda Browning, Esq. (Law Clerk)