

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**INTISAR MARTIN**

**Defendant**

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**No. 0134-2010  
CRIMINAL**

**OPINION AND ORDER**

The Defendant filed a Petition for Writ of Habeas Corpus on April 8, 2010. Both parties agreed to have the decision of the above matter determined on the transcript.

***Background***

A Preliminary Hearing was held before Magisterial District Judge Allen Page on January 22, 2010. Transcripts of the Preliminary Hearing reveal that on October 29, 2009, Rita Persun (Persun) was working at Susquehanna Health Medical Group Call Center when she received a call from a woman who identified herself as Intisar Martin (Martin). Martin stated that she was looking for a physician and that she had Medicare/Medical Assistance. Persun attempted to give Martin a list of Medicare Physicians, but Martin stated that she had already tried to see all of those physicians, and none of them would take her as a patient. Persun stated that Martin commented to her "...isn't this America? What is a person supposed to do? Lay down and Die?" Persun continued to try and help Martin find a physician and she provided Martin with the 800 number from Medical Assistance that helps patients find a physician. By listening to the tone of Martin's voice, Persun could tell that Martin was agitated. Martin told Persun that it was her place to find Martin a physician and then stated that she was going to learn how to make a

bomb and then she was going to blow up the hospital. Martin also told Persun that Martin was a “crazy bitch” and had the drugs to prove so. Persun gave Martin a number for therapy. Persun testified that she took Martin’s threat seriously and felt threatened by Martin’s statements. Persun wrote down the telephone number Martin called from and reported the incident. The hospital security and the Williamsport Police were notified of the incident. Officer Trent Peacock (Peacock) of the Williamsport Police Department testified at the Preliminary Hearing. Peacock responded to a call at the Susquehanna Medical Group Call Center on October 29, 2009, and spoke with Persun on that date. Persun advised Peacock that she received a call from a woman who identified herself as Intisar Martin and that she had the telephone number of the telephone from which that person called. Persun also advised Peacock that Martin made threats to build a bomb and blow up the hospital. Peacock then retrieved past police reports for Intisar Martin and discovered that the telephone number provided by Martin to Persun matched the contact number listed in the police reports from past contacts with Martin.

### *Discussion*

Martin filed a petition for Writ of Habeas Corpus on April, 8, 2010, in which she requests that the Court dismiss the charges against her for Threat to Use Weapons of Mass Destruction, Terroristic Threats, and Disorderly Conduct. Martin states that said charges should be dismissed because, even if the Commonwealth can prove that the above crimes were committed, the Commonwealth does not have sufficient evidence to establish the identity of the person making the call as being Martin.

It is well settled in this Commonwealth that "a petition for writ of habeas corpus is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient

evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003) (citing Commonwealth v. Kohlie, 811 A.2d at 1013 (Pa. Super. 2002); see Commonwealth v. Hetherington, 311 A.2d 209 (1975); Commonwealth v. Fountain, 811 A.2d 24, 25 n.1 (Pa. Super. 2002); Commonwealth v. Saunders, 691 A.2d 946, 948 (Pa. Super. 1997), *appeal denied*, 705 A.2d 1307 (1997)). "While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal." Commonwealth v. Wojdak, 466 A.2d 991, 997 (1983) (See Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Scolio v. Hess, 27 A.2d 705 (Pa. Super. 1942)). Courts define probable cause as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense." Kelley v. General Teamsters, Local Union 249, 544 A.2d 940, 942 (1987) (citing Miller v. Pennsylvania R.R. Co., 89 A.2d 809, 811 (1952)).

A person commits the crime of Threat to Use Weapons of Mass Destruction under 18 Pa. C. S. A. 2715 § (a)(4), when that person intentionally threatens, by any means, the placement or setting of a weapon of mass destruction. A person commits the crime of Terroristic Threats under 18 Pa. C. S. A. § 2706, when that person communicates, either directly or indirectly, a threat to commit any act of violence with intent to terrorize another. A person commits the crime of Disorderly Conduct under 18 Pa. C. S. A. § 5503(a)(4), when that person, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

The Court believes that the evidence presented at the Preliminary Hearing provides sufficient probable cause to believe that Martin was the person who committed the crimes in question. The Court believes that, based on the fact that the person who called Persun and identified herself as Martin called from the exact same telephone number the police already had on record as Intisar Martin's telephone number, that a reasonable ground of suspicion, supported by the circumstances, exists such that an ordinary prudent man in the same situation would believe that Martin committed the offenses. See Kelly at 942. (citing Miller at 811).

Furthermore, the Court believes there is sufficient probable cause to believe that Martin committed the crimes of both Threat to Use Weapons of Mass Destruction and Terroristic Threats. Martin's statement that she was going to learn how to make a bomb and was then going to blow up the hospital was clearly an intentional threat to place a weapon of mass destruction at the hospital, and such conduct was therefore a violation of Threat to Use Weapons of Mass Destruction under 18 Pa. C. S. A. 2715 § (a)(4). As to the crime of Terroristic Threats, the Court believes that Martin's statements to Persun indicating that Martin was going to learn how to make a bomb and was then going to blow up the hospital show that Martin communicated a threat to commit an act of violence with the intent to terrorize Persun. "Neither the ability to carry out the threat nor a belief by the persons threatened that it will be carried out is an essential element of the crime. Rather, the harm sought to be prevented by the statute is the psychological distress that follows from an invasion of another's sense of personal security." In Re: In The Interest Of: J. C., 751 A.2d 1178, 1180-1181 (Pa. Super. 2000). In this case, Persun felt threatened by Martin's remarks and she took Martin's threat seriously. The fact that Persun reported Martin's call and that the Williamsport Police Department was notified provides further evidence that Persun felt threatened by Martin's statements. Therefore, it is clear that there is

probable cause to believe that Martin committed the crime of Terroristic Threats under 18 Pa. C. S. A. § 2706.

The Court does not believe that a prima facie case as to the crime of Disorderly Conduct was made against Martin. 18 Pa. C. S. A. § 5503(a)(4), requires that a person 1) “with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof,” 2) “creates a hazardous or physically offensive condition by any act” 3) “which serves no legitimate purpose of the actor.” The Preliminary Hearing Transcripts reveal that Martin’s statement was probably made with the intent to cause public inconvenience, annoyance or alarm, and was not an individual threat to the person of Persun. However, Martin did not “...create a hazardous or physically offensive condition by any act...” 18 Pa. C. S. A. § 5503(a)(4). Martin merely **threatened** to make a bomb and blow up the hospital. None of the testimony presented at the Preliminary Hearing shows that Martin actually created any hazardous or offensive condition. Therefore, the Court concludes that the charge of Disorderly Conduct shall be dismissed.

**ORDER**

AND NOW, this 10<sup>th</sup> day of May, 2010 based on the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby GRANTED in part and DENIED in part. As to the charges of Threat to Use Weapons of Mass Destruction and Terroristic Threats, the Defendant's Petition is DENIED. The Defendant's Petitions is GRANTED as to the charge of Disorderly Conduct and said charge is hereby DISMISSED.

By the Court,

Nancy L. Butts, President Judge

cc. Henry Mitchell, Esq.  
Peter T. Campana, Esq.  
Amanda Browning, Esq. (Law Clerk)  
Gary L. Weber (LLA)