

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-988-2010
vs. :
:
WILLIAM L. ADAMS, : Opinion and Order re
Defendant : Defendant's Petition for Habeas Corpus

OPINION AND ORDER

By way of background, Defendant William Adams (hereinafter "Adams") is charged with theft by unlawful taking,¹ receiving stolen property,² simple assault,³ and two counts of harassment.⁴ A preliminary hearing was held on June 29, 2010, and the Magisterial District Judge held all of the charges for court.

Adams, through his attorney, filed a petition for habeas corpus on July 15, 2010. The Court scheduled a hearing and argument on this petition for August 3, 2010. At the time scheduled for the hearing, the parties agreed to submit the case on the transcript of the preliminary hearing, which was marked and introduced as Commonwealth Exhibit #1.

When reviewing a motion for habeas corpus, the Court must view the evidence and all reasonable inferences to be drawn from the evidence in the light most favorable to the Commonwealth. See Commonwealth v. Santos, 583 Pa. 96, 101, 876 A.2d 360, 363 (2005). With this standard in mind, the relevant facts follow.

On June 16, 2010 between the hours of 10:00 a.m. and noon, Paris May woke up and left a friend's house. She had about \$50 the last time she counted her money.

¹ 18 Pa.C.S. §3921(a).

² 18 Pa.C.S. §3925(a).

³ 18 Pa.C.S. §2701(a)(1).

⁴ 18 Pa.C.S. §2709(a)(1) and (3). The harassment charges were graded as summary offenses.

Around 3:00 pm. she went to the Shamrock and spent a few dollars on a bottle of Boone's Farm wine. She then rolled or balled all her paper money together and put it in a zippered pouch in her purse. She just threw the loose change in the bottom of her purse. She drank the bottle of wine and then started walking up Memorial Avenue. She had received some bad news and was crying. While walking, she met the defendant, William Adams (hereinafter "Adams"), who she had never met before that day. Adams asked her what was wrong. They walked around talking for a bit and ended up at the Laundromat on Fourth Street. They sat down and were just "hanging out." Ms. May's purse was on her right and so was Adams. Ms. May pulled her cell phone out of her purse and plugged it into an outlet to charge it. Ms. May was texting a friend. Although Adams told her he wanted to hang out with her, all of a sudden he wanted to leave so he asked to borrow Ms. May's phone to call a friend to pick him up. The friend arrived in a red car and Adams left the Laundromat.

About five minutes later, Ms. May walked up to Puff's to get cigarettes and realized the money which had been in the zippered pouch of her purse was gone. She got frustrated and started walking around. Eventually, she ran into Adams again. She asked him where her money was. Adams said he didn't have it. Ms. May said, "Who else would have taken it? I was with you." Adams kept denying that he took her money. Ms. May then pulled out a little scalpel type cutter to see if Adams still had her money and to try to intimidate him into returning it. She just stood there, though; she did not swing the cutter at Adams or anything like that. Adams began jumping from side to side then bent down, grabbed a stick, struck Ms. May in the head with it, and fled. Ms. May fell to the ground.

Several people came over to help and called the police and the ambulance.

Ms. May spoke to the police at the hospital. She acknowledged in her preliminary hearing testimony that she could have told the police the amount of money taken was about \$35. She sustained a black eye as a result of being struck by Mr. Adams.

Ultimately, the police arrested Adams and charged him with theft, receiving stolen property, simple assault, and two counts of summary harassment.

At this stage of the proceedings, the Commonwealth must present a prima facie case that a crime has been committed and the Defendant was the one who probably committed it. Commonwealth v. Mullen, 460 Pa. 336, 333 A.2d 755, 757 (Pa. 1975). A prima facie case exists when the Commonwealth presents evidence of each of the material elements of the crimes charged and establishes sufficient probable cause to warrant a belief that the accused committed the offenses. Santos, supra, quoting Commonwealth v. Huggins, 575 Pa. 395, 836 A.2d 862, 866 (2003).

“The elements of theft are: (1) unlawful taking or exercising unlawful control over (2) movable property of another (3) with the intent to deprive the owner thereof.” In the Interest of J.D., 798 A.2d 210, 213 (Pa. Super. 2002); see also 18 Pa. C.S. §3921(a); Commonwealth v. Goins, 867 A.2d 526, 530 (Pa.Super. 2004).

Although there may have been inconsistencies in the victim’s testimony regarding the amount of money taken and whether she drank any alcohol on the day in question, the Court finds that there is sufficient circumstantial evidence to establish a prima facie case that Adams took the victim’s money. The victim testified that she had money

rolled up in a zippered pouch in her purse before she met Adams. She walked around with Adams and sat with him at the laundromat. Although Adams told her he wanted to hang out with her, all of a sudden he asked to borrow her phone to call a friend to pick him up. After Adams left, the victim walked to Puff's to get cigarettes and realized all her money was gone. While the victim did not testify that she saw Adams take her money, the reasonable inference to be drawn from the victim's testimony is that Adams took her money. Whether the victim's testimony is credible cannot be considered at this stage of the proceedings; rather, it is an issue for trial. Liciaga v. Court of Common Pleas of Lehigh County, 523 Pa. 258, 263, 566 A.2d 246, 248 (Pa. 1989)(preliminary hearing magistrate not empowered to make credibility determinations regarding witnesses); Commonwealth v. Williams, 911 A.2d 548 , 551-552 (Pa. Super. 2006)(weight and credibility of evidence are not an issue at preliminary hearing or habeas proceedings).

“Receiving stolen property is established by proving that the accused ‘intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained or disposed of with intent to restore it to the owner.’” Commonwealth v. Galvin, 603 Pa. 625, 640, 985 A.2d 783, 792 (Pa. 2009), quoting 18 Pa.C.S. §3125(a). The same evidence that establishes a prima facie case for theft by unlawful taking would establish that Adams received or disposed of the victim's property, knowing that it was stolen. The evidence of Adam's flight when confronted also could support an inference of his guilt.

The Court also finds the evidence is sufficient to establish a prima facie case for the charges of simple assault and harassment. “A person commits simple assault if he ‘attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another.’” Commonwealth v. Torres, 564 Pa. 219, 223, 766 A.2d 342, 344 (Pa. 2001), quoting 18 Pa.C.S. §2701(a)(1). The harassment statute states in relevant part: “A person commits the crime of harassment when, with the intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact...; or (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose...” 18 Pa.C.S. §2709(a)(1) and (3). The victim clearly testified that Adams struck her in the head with a stick and she suffered a black eye as a result. If the jury accepts the victim’s testimony as credible, it could find Adams caused bodily injury to her, struck her with the intent to annoy or alarm her, or took her money and struck her with a stick for no legitimate purpose.

The Court acknowledges that there is an issue of self-defense in this case, but it is an issue to be resolved by the jury. If the jury accepts the victim’s testimony, it could find that Adams stole the victim’s money and he struck her with a stick in order to flee when she confronted him about the theft. If the jury does not accept the victim’s testimony, it could find that Adams did nothing wrong and he was simply defending himself when the victim confronted him with a scalpel type cutter.

ORDER

AND NOW, this ____ day of September 2010, for the foregoing reasons, the Court **DENIES** Adams' petition for habeas corpus.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire (ADA)
Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file