

COMMONWEALTH : No. CR-34-2010
vs. :
:
JOEL KENNETH FISHER, JR., : Motion for Writ of Habeas Corpus
Defendant :

OPINION AND ORDER

The Defendant is charged with two counts of terroristic threats. On February 23, 2010, the Defendant filed an Omnibus Pre-trial Motion, which contained a request for a writ of habeas corpus on the second count, involving alleged victim S.S.

Defendant claims the Commonwealth cannot establish a prima facie case with respect to one of the terroristic threats charges. A prima facie case is established if the Commonwealth produces evidence of each element of the crime and establishes sufficient probable cause to warrant the belief that the accused committed the offense. *Commonwealth v. Santos*, 583 Pa. 96, 101, 876 A.2d 360, 363 (2005). At this stage of the proceedings, the evidence is viewed in the light most favorable to the Commonwealth. *Id.*

A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to commit any crime of violence with intent to terrorize another. 18 Pa.C.S.A. §2706(a)(1). To establish this crime, the Commonwealth must prove that (1) the defendant made a threat to commit a crime of violence; and (2) such threat was communicated with the intent of terrorizing another or with reckless disregard for the risk of causing terror. *Commonwealth v. Kelley*, 444 Pa. Super. 377, 386, 664 A.2d 123, 127 (1995). According to Webster's Ninth New Collegiate Dictionary terrorize means to fill with terror or anxiety, to scare, or to coerce by threat or violence.

S.S., a fifteen year old girl, testified at the preliminary hearing that on October

19, 2009, she was at her cousin's house, which is right next door to the Defendant's house. She walked outside and across the street to check the sign in front of the Muncy High School then came back and sat outside on her cousin's porch. The Defendant came out of his residence with a three to four foot long, pointy object. The Defendant pointed the object at S.S., took it across his throat two times and then pointed it back at S.S. The Defendant's actions scared S.S. She went inside her cousin's house, locked the door and tried to call her cousin.

The Court finds that this evidence and the logical inferences from this evidence are that the Defendant indirectly threatened to cut S.S.'s throat with the long pointy object. This conclusion is further buttressed by Don Allen's and C.L.'s testimony from the preliminary hearing.

C.L., a fourteen year old boy, testified that as he and a friend were walking to the Muncy football game on October 16, 2009, he heard someone yell "Hey." He turned around and saw the Defendant on his porch. Thinking that the Defendant was trying to get his attention, he started to cross the street and walk toward the Defendant's house. The Defendant then came down off his porch and yelled, "I'm gonna stab you in the neck with a pipe." C.L. told Don Allen, a constable who was at the football game, about this incident.

Don Allen also testified at the preliminary hearing. Mr. Allen testified that C.L. and his friend came running up to him at the football game and said a guy was going to kill them if they went by his house and providing a description of the guy and where he lived. Mr. Allen realized they were describing the Defendant. On Monday morning (October 19, 2009), the Defendant came to the school looking for Mr. Allen and wanted to talk to him

about the boys. Mr. Allen told the Defendant he would stop by his house after school. When Mr. Allen spoke to him later that day, the Defendant said the boys had been lifting up his motorcycle cover and had been peering in a car. The Defendant indicated he said, "I told them to get the 'F' out of there. Don't ever, ever come by my house again. If I catch you in there I'll kill you. Just stay away from my stuff." A few weeks later, the Defendant had another conversation with Mr. Allen where the Defendant indicated the boys came back that Friday night with some of their friends and they were in his yard, giving him the finger and swearing at him. The Defendant told Mr. Allen he had a cut off or broken shovel handle and he kept telling the boys to get the hell off his property and stay the hell off his property or he was going to kill them, but the boys kept hollering and swearing at him. The Defendant then opened up his door and got "Mr. Wesson," which would have been a Smith and Wesson gun. The Defendant was holding the gun at his side. He raised it and he said to the kids, "You guys ever see anything like this? Wyatt Earp used to have one," then the kids ran "like hell".

The totality of the evidence and the reasonable inferences to be drawn therefrom, taken in the light most favorable to the Commonwealth, is sufficient to establish a prima facie case that the Defendant threatened to cut or stab S.S. in the throat with a long, pointy object (likely a cut off or broken shovel handle), and he did so with the intent to terrorize S.S. or at the very least, he recklessly disregarded the risk that his conduct would cause terror to S.S.

Accordingly, the following order is entered:

ORDER

AND NOW, this ____ day of May 2010, the Court DENIES the Defendant's Motion for Writ of Habeas Corpus contained in his Omnibus Pretrial Motion.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney (A. Melissa Kalas)
G. Scott Gardner, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file