

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**PAUL CRISSMAN,
Defendant**

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**No. 1416-2011
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Habeas Corpus on November 9, 2011. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on October 12, 2011 before Magisterial District Judge James Sortman.

Background

At the Preliminary Hearing, Jacob June (June) testified that on October 7, 2011, around 3:00 p.m., he was in the front yard of his home, located at 1123 State Road 184, Trout Run, PA 17771, when he saw his neighbor, Paul Crissman (Defendant) at the edge of June's yard. June was sitting on his dirt bike putting on his helmet when he saw the Defendant pick up a black, long gun, which he believed to be a shotgun, and point the gun to the left of where June was seated. June then heard the gun go off, and saw leaves about 30 to 40 feet from where he was seated on his bike scattered on the ground in the direction that the Defendant had pointed the gun. Following the incident, June went into his home and told his mother that the Defendant had shot at him and he then called the police to report the incident. June then saw the Defendant

come back to the area on his four-wheeler twice that day and June saw him looking around in the area where the leaves scattered following the gun shot.

Trooper Matt Sweet (Sweet) of the Pennsylvania State Police executed a search warrant at the Defendant's residence, but did not find any firearms or shotgun shells. Sweet also went to the Defendant's brother's house, who informed Sweet that he had three of the Defendant's firearms at his residence, including a rifle, but that he did not believe the Defendant could have had possession of any of the firearms on the day of the alleged incident, as the family was not home and the Defendant did not have access to their residence. Sweet also testified that he and Trooper Edwards searched the area in the woods where June said he observed the Defendant after the gun shot incident, but the evidence was inconclusive as to whether someone had recently been in that area. Sweet also indicated that a gun shot residue kit was collected from the Defendant, but that as of the time of the Preliminary Hearing, the results of the test were not yet available.

The Defendant was charged with two counts of Aggravated Assault, one a felony of the first degree and one a felony of the second degree, one count of Simple Assault, a misdemeanor of the second degree, one count of Recklessly Endangering Another Person, a misdemeanor of the second degree, and Disorderly Conduct, a summary offense. Following the Preliminary Hearing, Count 2 Aggravated Assault was dismissed.

Discussion

In his Petition for Habeas Corpus, the Defendant, through his attorney, contends that the Commonwealth failed to present a prima facie case for the charges of Aggravated Assault, Simple Assault, and Recklessly Endangering Another Person, and that these charges should

therefore be dismissed. “A prima facie case consists of evidence produced by the Commonwealth which sufficiently establishes that a crime has been committed and that the accused is probably the perpetrator of that crime.” Commonwealth v. McConnell, No. 1795 C 2009, 2009 Pa. Dist. & Cnty. Sept. LEXIS 252 at 9 (Pa. Dist. & Cnty. Sept. 10, 2009) (See Commonwealth v. McBride, 595 A.2d 589, 591 (Pa.1991). “Every element of the crime charged must be supported by the evidence; however the Commonwealth need not establish guilt beyond a reasonable doubt.” McConnell at 9. (See Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995). “The Commonwealth establishes a prima facie case as long as the evidence presented establishes sufficient probable cause to warrant the belief that the accused committed the offense.” McConnell at 9. (See Lopez at 1153.)

The Defendant contends that the Commonwealth failed to show that he attempted to cause, or that he did cause serious bodily injury to June while possessing the requisite *mens rea*. A person commits the offense of Aggravated Assault under 18 Pa.C.S. §2702(a)(1) 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 the value of human life. 18 Pa.C.S. §2301 defines serious bodily injury as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. When no serious bodily injury results from the accused's actions, the Commonwealth must prove that the accused attempted to cause another to suffer such injuries. See Commonwealth v. Lopez, 654 A.2d 1150 (Pa. Super. 1995).

As June did not suffer serious bodily injury as a result of the Defendant's actions, the Commonwealth must prove that the Defendant attempted to cause June such injuries. Attempt, in the context of an assault, is established when the accused intentionally acts in a manner which

constitutes a substantial or significant step toward perpetrating serious bodily injury upon another. Lopez at 1154 (See Commonwealth v. Carter, 478 A.2d 1286, 1289 (Pa. 1984). The Court finds that the Defendant's actions in pointing and firing a gun at a location feet from where June stood does not constitute a substantial step toward perpetrating serious bodily injury upon June. Although the Defendant fired the gun in this case, the Court finds that the facts presented are analogous to a situation where a defendant actually points a gun at a victim without firing the weapon. See Commonwealth v. Sanders, 627 A.2d 183 (Pa. Super. 1993) where the Superior Court found that the mere act of pointing a gun at another person was not sufficient to support a conviction for aggravated assault, as something more was needed to establish a specific intent to cause injury to the person at whom the gun pointed. As June testified that the Defendant pointed and fired the gun to the left of where June was seated, not directly at June, the Court finds that something more was needed to establish the specific intent to cause injury to June. Therefore, the Court finds that the Commonwealth did not present sufficient evidence to establish a prima facie case that the Defendant committed the offense of Aggravated Assault.

A person commits the offense of 18 Pa.C.S. §2705 Recklessly Endangering Another Person if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Under 18 Pa.C.S. 302(3), one acts recklessly when he, with respect to a material element of an offense:

consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

The Court believes that the Defendant's actions in pointing and shooting a firearm within feet of where June stood in his own yard was at a minimum reckless conduct which placed, or may have placed, June in danger of death or serious bodily injury. Therefore, the Court finds that the Commonwealth did present a prima facie case for Recklessly Endangering Another Person.

A person commits the offense of 18 Pa.C.S. §2701(a)(3) Simple Assault if they attempt by physical menace to put another in fear of imminent serious bodily injury. "The elements which must be proven are intentionally placing another in fear of imminent serious bodily injury through the use of menacing or frightening activity." Commonwealth v. Reynolds, 835 A.2d 720 (Pa. Super. 2003) (see also Commonwealth v. Little, 614 A.2d 1146 (Pa. Super. 1992)). Intent can be proven by circumstantial evidence and may be inferred from the defendant's conduct under the attendant circumstances. Reynolds at 721 (See also Little at 1154). The Court infers that the Defendant's actions in pointing and shooting a firearm within feet of where June stood in his own yard constitutes menacing or frightening conduct which intentionally placed June in fear of imminent serious bodily injury. As such, the Court finds that the Defendant did present a prima facie case to establish Simple Assault.

ORDER

AND NOW, this 22nd day of December, 2011 based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Habeas Corpus is hereby GRANTED in part and DENIED in part. Since the Court believes that the Commonwealth failed to establish the elements of Aggravated Assault, that charge is hereby DISMISSED. The remainder of the Petition is DENIED and the charges of Recklessly Endangering Another Person and Simple Assault, along with Disorderly Conduct, which was not part of the Habeas Petition, shall remain.

By the Court,

Nancy L. Butts, President Judge

cc. DA
William J. Miele, Esq.